

(2003) 12 DEL CK 0009
In the Delhi High Court
Case No : CW 2723 of 2003

Mr. Brijesh Ranjan

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 09-12-2003

Acts Referred:

Citation : (2003) 12 DEL CK 0009

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Jayant Bhushan and Anil Dutt, for the Appellant; Maninder Singh and Abhinav Mukerjee, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—Rule. By consent of Parties the Petition is taken up for final hearing.

2. The Petitioner's case is that he had cleared his Intermediate examination with an aggregate of 49% in Physics, Chemistry, Biology and English. He, Therefore, did not have the minimum 50% specified by the Medical Council of India (MCI). Disentitled or ineligible as he was to get admission in any Medical College in India, he enrolled with St. Petersburg State Pediatric Medical Academy and pursued studies there for four years between 1992-96. Thereafter, he continued his medical studies for two years (1996-98) in St. Petersburg State Medical College which is recognised both by the Government of Russia as well as by the Medical Council of India. He was awarded the medical Degree from the State College. He returned to India and applied for provisional registration in August, 1998, which was declined by MCI's letter dated 21.12.1998 on the grounds that he had obtained less than 50% marks. After the decision of the Hon'ble Supreme Court in Medical Council of India Vs. Indian Doctors from Russia Welfare Associations and Others, , the MCI addressed another letter to the Petitioner on the subject of the issuance of a provisional/permanent registration certificate to him. It is this decision which is under challenge.

3. The relevant paragraph of the Indian Doctors from Russia Welfare Association case (supra) reads thus:

""6. In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15-3-2001, the following guidelines are placed before this Court by the Government of India:

(A) The case of all persons who applied for registration to MCI prior to 15-3-2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:

(i) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in a recognised institution plus the internship, would be seven years, which is the requirement even otherwise.

(ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.

(B) All students who have taken admission abroad prior to 15-3-2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations 2002 shall be allowed to appear in the screening test even they also come in the categories of circumstances contained in (A)(ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform the minimum eligibility requirements for joining and undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15-3-2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15-3-2002. From 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine"".

4. The Petitioner's contention is that he is entitled to the benefit of the remission granted in (A) (ii) above. The Respondent's stand is that since the Petitioner falls within both clauses, he is not entitled to be granted provisional registration. Attention has also been drawn to two subsequent Orders of the Hon'ble Supreme Court dated 22.10.2002 and 4.4.2003. In the first case, the application seeking relief similar to what has been passed in the present case was turned down and the application was dismissed. In the second case, the Hon'ble Court observed that no relief could be granted in similar applications, but observed that ""it is

open to the concerned parties to pursue appropriate remedies as may be available to them." Mr. Maninder Singh vehemently argues that this Court ought not to even consider those reliefs which were turned down or rather not granted by the Hon''ble Supreme Court. Mr. Bhushan, however, contends that since these were non-speaking Orders, they would have no bearing on different or subsequent proceedings as has been explained in *Indian Oil Corporation Ltd. Vs. State of Bihar and others*, . Secondly Mr. Bhushan submits that the Orders dated 4.4.2003 clarify that the rights of persons identically placed with the Petitioner to pursue appropriate remedies had been specifically reserved to them by the Hon''ble Supreme Court. He submits that these rights have been ventilated in the present Petition which is, Therefore, maintainable. I shall steel clear of this conundrum and will dispose of this petition on the foundation of my understanding of paragraph 6 of the MCI judgment extracted above.

5. The stark reality is that in India admission to Medical Colleges is available only to exceptionally meritorious students as the competition is extremely keen. Even the obtainment of a First Division is usually not enough to secure admissions to Medical Colleges in India. This position does not obtain in Colleges abroad and so far as unrecognised teaching Colleges are concerned, their primary concern may be to increase their student enrollment. It is in the endeavor to maintain professional excellent and standards that the M.C.I. has prescribed a minimum eligibility criteria of 50% for all students aspiring to become doctors. As already mentioned, empirical scrutiny reveals that only those students who obtain in access of 80% stand a chance of being selected for career and future in medicine. Human life has neither substitute nor parallel, and the resolve to ensure greatest proficiency in medical practice needs to be landed and encouraged. Considerable litigation has been generated on adherence to these minimum standards but even in cases where reservations/preferences have been granted in respect of Scheduled Caste, Scheduled Tribe, the eligibility criteria has not been totally ignored. It cannot also be gainsaid that medical education in India is of superlative standard, and students have to undergo a vast curriculum and intensive instruction. Whilst it may be a right of an individual to pursue a profession or avocation of his choice, this cannot be left unbridled, especially where the well being of other individuals is at peril. Stringent scrutiny is, Therefore, in order even in respect of those individuals who have pursued medical studies abroad. The Hon''ble Supreme Court has given its imprimatur to the efforts of the MCI to maintain standards in a multitude of cases. The Apex Court has assiduously and steadfastly declined to extend the deadline of 30th September of the Academic Year commencing two months earlier in Delhi, primarily in order to ensure that students undergo a complete course of instructions. Courts should be loathe to interfere with or impede the protection and improvement of educational standards. The existence of so called Colleges and Universities which are established for profit motives rather than the noble objectives of imparting education is not an illusion. As Governmental control is now sought to be substituted by private enterprise, the maintenance of

educational standards requires continuous monitoring. So far as foreign medical institutions are concerned this can be achieved only if the concerned Regulatory Body, in the present case Medical Council of India, is invested with the power and the duty to grant recognition to institutions imparting quality education. This is the obvious reason which prompted the Apex Court not to completely accept education in a non-recognized institution. To ameliorate the handicaps and hardships faced by those students who were otherwise ineligible for admission to medical schools in India, but had pursued studies abroad in an unregulated regime, relief was granted to those who had attended non-recognized institution by mandating an additional internship corresponding to the years spent by the students in such institutions. But this is only one face of the possible a lady. The other aspect is whether a student who has failed to obtain even the minimum eligible percentage should be given a license to practice medicine. The availability of financial resources to pursue medical studies abroad can scarcely justify minimum standards to be thrown to the winds. There is a possible assumption that an individual who has demonstrated poor scholastic ability in the School Leaving Examination may improved in the future and at least achieve a modicum of proficiency, justifying the grant of a license to him. The assumption is that this may be achieved where a student successfully completes his studies in an educational institutions of stature and eminence, this being manifest and certified by the recognition of the MCI. The would be no justification whatsoever in allowing an individual to play with the life and health of other persons where he has exhibited his learning by receiving only pass marks and has compounded this by attending an un-recognised medical teaching institution. Such persons may prove to be potential dangers to society. After receiving only pass-marks these persons have attended substandard Medical Colleges and yet aspire to become Doctors.

6. Once these concepts are kept in perspective, the conditions laid down by the Hon"ble Supreme Court are bereft of all possible controversies. Now, rigorous and stringent conditions even so far as foreign studies in medicine have been enforced by amendments carried out in 2001. The Apex Court quite clearly granted a remission to students who did not meet minimum admission norms of the MCI for joining under-graduate medical courses in India, only so long as they had pursued studies in foreign medical colleges recognised by MCI. Any argument which renders the stipulation ""were admitted to foreign institutes recognized by MCI"" as otiose must be rejected. The Hon"ble Supreme Court has pointedly used the word ""irregularity"". Therefore, in respect of those students such as the Petitioner who do not possess the minimum admission norms and have also not been ""admitted"" to foreign institutes recognized by MCI, the irregularity cannot be condoned. On a perusal of paragraph 6(B) of the Indian Doctors from Russia Welfare Associations and Others (supra) the Apex Court has again clarified that those students who did not meet the minimum admission norms of the MCI would be permitted to appear in the screening test provided he had taken admission in an institute recognized by the MCI. If an individual

decides to pursue medical studies in a foreign country after 15.3.2002, having failed to meet the minimum admission norms, he would be debarred from even appearing in the screening test. Equitable considerations have no role to play where the endeavor is to maintain standards of excellence.

7. The Petitioner does not meet the admission norms of the MCI and did not get admission to a foreign institute recognized by the MCI. The irregularity cannot be condoned. The Petition is without merit and is dismissed.