
(2006) 04 DEL CK 0004

In the Delhi High Court

Case No : LPA No. 661 of 2006 and CMs. 5876-77 of 2006

National Board of Examinations

APPELLANT

Vs

Dr. G. Anand Ramamurthy and Others

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 131 DLT 627 : (2006) 89 DRJ 311

Hon'ble Judges : V.K. Jain, Acting C.J.; S.N. Aggarwal, J

Bench : Division Bench

Advocate : Manmohan and Rakesh Gosain, for the Appellant; Sanjay Bhatt, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, Acting Chief Justice

1. Admit.

2. Respondent Nos. 1 & 2 are doctors having obtained degree in Masters of Surgery (MS). In their pursuit for still having post doctoral decree, they enrolled themselves with the National Board of Examinations for the Diplomate of National Board (DNB) in June, 2003. As per the Bulletin of Information and Application Form it was stated that examinations were held twice a year; (a) the written examination for primary will be held on Sunday following Second Saturday of June and December and Final on Second Saturday and Sunday at the specified centres. Just when they have finished almost three years and expected to appear in June, 2006, there was a change in the policy on 26.3.2006 when their discipline was not included in the examination notification published in the newspaper.

3. The learned Single Judge has issued a mandamus to the appellant only to abide by and honour the curriculum contained in the bulletin of information as publicly held out by them as far back as in June, 2003. However, impugning the

said judgment of the learned Single Judge the appellant before us has filed the present appeal, inter alia, on the ground that no mandamus could have been issued under Article 226 of the Constitution of India. It is contended that mandamus issued by the learned Single Judge would be against the policy of the appellant which has been changed in 2006 at the advice of the experts in the field. It is submitted that the policy decision was passed on fair assessment of administrative as well as financial factors and considerations that holding of such examination would have a detrimental and prejudicial effect on the functioning of the appellant. It is further contended by Mr. Manmohan, learned Counsel for the appellant that the learned Single Judge has erroneously sought to apply the principle of legitimate expectation and promissory estoppel. It is also contended that even if the appellant agrees with the holding of the examination for the respondents as per the bulletin of information and application forms for Diplomat of National Board in June, 2003, still in view of the eligibility criterion as mentioned at para 7.12 (ii) and (iii), the respondent cannot take examination. Para 7.12 is as under:

7.12 ELIGIBILITY FOR APPEARING IN SUPER SPECIALITIES

- (i) Candidates should be in possession of a recognised Postgraduate degree qualification as specified under each speciality given in the syllabus for Medical and Surgical super specialities respectively.
- (ii) Candidates should have completed the prescribed three years training in the speciality after postgraduate degree, in an institution recognised by the MCI/NBE/University as specified under each speciality.
- (iii) Candidates should be in possession of a certificate of training from the Head of the department duly countersigned by the Head of the Institution and produce necessary records as may be required.
- (iv) Candidates should submit a certificate of writing thesis/dissertation as evidence of research work in the speciality. A copy of the full thesis of dissertation may be submitted to the Board's office within two weeks of the intimation of Result of theory examination to the candidate. Candidates who will be appearing in the subject under the heading Super Speciality (like Cardiology & Cardiothoracic Surgery etc.) need not write their thesis/dissertation if they have already written their thesis during their MD/MS/NBE examinations. However, they have to submit a proof in support of their having written thesis during their MD/MSI/NBE examinations.
- (v) Every candidate will be required to produce performance record (log book) containing details of work done by him/her duly certified by the supervisor, and countersigned by the administrative Head of the Institution at the time of their Practical Examination failing which he/she will not be allowed to take the practical examination. However, a certificate to this effect has to be attached along with application form for eligibility purposes. The supervisor would also offer his remarks on the training received by the candidate in the log book.

Honorary staff members, who are recognised as supervisors by their institutions or the local university will also be recognised by the NBE.

4. We refer to the averment made by the appellant in para 12 of the appeal that the DNB qualification is internationally recognised. For obtaining DNB qualification the candidates have to firstly register themselves with the appellant to undergo three years training in any of the institutes accredited by the appellant in any of the disciplines/streams of Modern Medicine offered by the appellant. The fact that the DNB qualification is recognised internationally has led to young doctors who have already got Masters' degree in Surgery (Gastroenterology) to go for post doctoral degree of DNB. The same was in terms of the bulletin of information as published by the appellant in 2003. In 2003 once they had registered themselves and undergone three years training it was too late in the day for the appellant to say that they have changed the policy in 2006 and pursuant to that policy no examination can be held in June, 2006. As discussed by the learned Single Judge the only reason for not holding the examination is that in the stream of Gastroenterology there are 20 students. As out of total 54 streams it is not denied by the appellant that they are holding examination in 27 streams as has been stated by the appellant in para C of the appeal. As great reliance is placed by Mr. Manmohan on para 7.12 dealing with the eligibility conditions and it is canvassed before us that as the respondents will not have a certificate of training from head of the department in terms of para 7.12 (ii) & (iii), Therefore, they cannot take the examination even if the appellant conduct the same. We are afraid that the stand of the appellant was totally inconsistent not only in terms of the eligibility criterion but also as per past practice. Eligibility criterion 7.12 (v) clears the doubt, if any, that what the candidate was required to produce was a pro forma log book containing details of work done by him duly certified by the supervisor and countersigned by the administrative head of the institution of their practical examination failing which he shall not be allowed to take the practical examination. A certificate to that effect was to be attached along with the application form for eligibility purposes. On being confronted by us, learned Counsel for the appellant could not deny that that was the practice hitherto undertaken for allowing the candidates for taking the super speciality examination which were conducted in the month of June. It has also been admitted by the appellant that they are going to conduct examination in other super speciality stream numbering 27. Merely because there are less number of students, the appellant cannot abdicate their responsibility not to conduct the examination for the respondents on the ground that it would require some more finances.

5. Therefore, we do not see any substance in the argument of the appellant. The learned Single Judge has directed the appellant only to conduct the examination as held out by them in their bulletin of information 2003. Therefore, it was a case of exercise of jurisdiction under Article 226 of the Constitution of India to secure the end of justice and no fault can be found with that.

6. Vaguely an argument was also advanced by learned Counsel for the appellant that the applications at the initial stage which were submitted by the respondents which find mention at page 137 of the paper-book was only for registration as DNB trainee would not give any right to the respondent or make them eligible for taking the examination in June, 2003. We are afraid that the basic premise of the argument is fallacious. The application for registration as DNB trainee is the foundation of the right of the respondents to appear and become eligible in terms of Clause 7.12 of the eligibility conditions. If they were not enrolled as DNB trainee in 2003 they could not fulfill the requirement of the eligibility criterion as stipulated in Clause 7.12 of the brochure.

7. In view of the above we do not find any infirmity in the impugned order of the learned Single Judge and consequently this appeal fails and is hereby dismissed.