
(2013) 11 DEL CK 0061

In the Delhi High Court

Case No : Writ Petition (C) No. 3861 of 2012

Neha Gogia

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Councils Act, 1874 — Section 3

Citation : (2014) 1 AD 149

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

**Advocate : Arvind Kumar Gupta and Mr. Abhishek Goyal, for the Appellant;
Ashish Kumar, for the Respondent**

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The petitioner before this Court, having studied from DPS International School, New Delhi appeared in the "A" level examination conducted by University of Cambridge and obtained Grade "D" in Chemistry and Grade "E" in Physics and Biology. The petitioner took admission in the MBBS Course of International University of Health and Sciences, School of Medicine, St. Kitts, West Indies in February, 2007. In May, 2007, she applied to Medical Council of India for grant of Eligibility Certificate. The said Certificate, however, was refused vide letter dated 23.4.2008, on the ground that the marks obtained by the petitioner in Physics, Chemistry and Biology taken together, were less than 50%. The petitioner completed her MBBS Course and was issued a Provisional Certificate on 1.6.2012. The petitioner wants to appear in the Screening Test conducted by MCI but is unable to appear in the said test without Eligibility Certificate being issued to her. The petitioner is, therefore, before this Court seeking the following reliefs:-

a) issue an appropriate Writ, Order or direction to the respondent whereby the decision of Medical Council of India dated 23.04.2008 may kindly be quashed and consequently the respondent be directed to reconsider the case of the petitioner

for grant of the "Eligibility Certificate", as applied on 07.03.2011; and/or

b) issue an appropriate Writ, Order or direction to the respondent whereby respondent be directed to issue Eligibility Certificate to make her Eligible for appearing in the screening test;..

In its counter-affidavit, the respondent/MCI has stated that in terms of the requirement prescribed under its Regulations, the petitioner was required to obtain 50% marks in the qualifying exam in Physics, Chemistry and Biology taken together and since she did not obtain the requisite marks, she is not entitled to issue of Eligibility Certificate.

It is also stated in the counter affidavit that vide decision dated 1.4.2008, the Council decided that in the cases where grades are awarded in the qualifying examination, a candidate would be eligible to issue of Eligibility Certificate if he obtained the following grades:-

1. Grade A to D in PCB (equal and above 50%)
2. Grade E in one subject and A to D in rest of two subjects (average comes to 50%)

However, since the petitioner had obtained two "E" Grades in two out of three relevant subjects, she was not found eligible for grant of the Eligibility Certificate.

2. Regulation 5(1) of Graduate Medical Education Regulations 1997 framed by Medical Council of India reads as under:-

5. Selection of Students:

The selection of students to medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country:

- 1) In states, having only one Medical College and one university board/ examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

xxxxxx xxxxx

5) Procedure for selection to MBBS course shall be as follows:-

1. In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in the clause (2) of regulation 4.

A careful reading of the aforesaid Regulation would show that if a person seeks to take admission in a Medical College in India on the basis of the qualifying

examination, he is required to obtain atleast 50% marks in Physics, Chemistry and Biology taken together in the said qualifying examination.

3. Regulations 3 and 8 of the Eligibility Certificate Regulation 2002 framed by MCI with the prior approval of the Central Govt. in exercise of its statutory power u/s 3 of the Indian Council Medical Act read as under:-

3. An Indian citizen, who has passed the qualifying examination either from India or an equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution on or after 15th March, 2002 shall approach the Council for issue of an Eligibility Certificate for that purpose.

8. The Council shall consider the application for Eligibility Certificate and verify the following details as per the Regulations of the Council-

1. ...

2. Whether the candidate fulfills the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997, i.e., minimum qualifying marks criteria in Physics, Chemistry, Biology and English, including relaxed criteria in case the candidate belongs to a reserved category?

4. A conjoint reading of the above referred Regulations would show that a person seeking to study medical education in a foreign medical institution on or after 15th March, 2002 should have obtained atleast 50% marks in Physics, Chemistry and Biology taken together in the qualifying examination, in order to become eligible for such admission. If he takes admission in a foreign medical institution without obtaining the requisite marks in the qualifying examination, he is not entitled to issue of Eligibility Certificate by the Medical Council of India in terms of the Eligibility Certificate Regulations 2002.

5. A perusal of the result of the petitioner in the "A" level examination conducted by University of Cambridge would show that he obtained Grade "E" in Biology and Physics and Grade "D" in Chemistry. Grade "D" admittedly is equivalent to 50%-59% marks whereas Grade "E" is equivalent to 41%-49% marks.

6. A perusal of the decision taken by MCI which is available on p.24 of its Counter Affidavit would show that the Council decided that in order to be eligible for issue of Eligibility Certificate, the applicant should have obtained at least Grade "D" in two subjects, out of Physics, Chemistry and Biology. If the applicant obtains Grade "E" in more than one subject out of Physics, Chemistry and Biology, he is deemed to have obtained less than 50% marks in Physics, Chemistry and Biology taken together and consequently is not eligible for issue of Eligibility Certificate. The learned counsel for the respondent MCI submitted that the aforesaid decision is being applied by the Council in all the cases where the candidate has obtained grades and not marks in the qualifying examination. If the case of the petitioner is examined in the light of the aforesaid decision, she

is not eligible for the issue of Eligibility Certificate.

As noted earlier Grade "D" is awarded to a student who scores marks between 50% to 59% whereas Grade "E" is awarded to a person who scores marks between 40% to 49%. If I take the mean of 50% to 59% for the purpose of computing the marks of the petitioner in one subject and the mean of 40% to 49% for her marks in the remaining two subjects, out of Physics, Chemistry and Biology, she still does not make to 50% on an average basis since she requires atleast 150 marks out of 300 marks whereas the total marks computed on mean basis come to 145. Therefore, the decision taken by MCI to treat only the candidates who secure atleast Grade "D" in two subjects out of Physics, Chemistry and Biology as eligible for issue of Eligibility Certificate, cannot be faulted with.

7. During the course of arguments, the learned counsel for the petitioner referred to the decision of this Court in Shambhavi Sharma Vs. National Board of Examinations and Another, where this Court recorded the statement of the counsel for the MCI that it is the Association of Indian Universities, which determines as to whether any examination is equivalent to Intermediate Science Examination of an Indian University/Board or not. The aforesaid statement recorded by the Court, however, is of no consequence. In the case before this Court, since the issue involved in this petition is not as to whether the examination conducted by the Cambridge University is equivalent to Intermediate Science Examination of an Indian University/Board or not. The issue in this case is as to whether Grade "E" in two subjects out of Physics, Chemistry and Biology, Grade "D" in the third subject can be taken as 50% or more marks in the qualifying examination or not and the said issue was not addressed in Shambhavi Sharma(supra). For the reasons stated hereinabove, I find no illegality or infirmity in the decision taken by Medical Council of India. The writ petition is, hereby, dismissed. There shall be no order as to costs.