
(2009) 05 DEL CK 0150
In the Delhi High Court
Case No : Writ Petition (C) 8160 of 2008

Nusrat Jahan Bukhari

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Constitution of India, 1950 — Article 142
Indian Medical Council Act, 1956 — Section 13

Citation : (2009) 05 DEL CK 0150

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Sandeep Sethi, Pramod Gupta and Manish Kumar, for the Appellant;
Maninder Singh and P. Singhdev, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J.—The admitted factual matrix is that the petitioner Ms. Nusrat Jahan Bukhari had passed matriculation examination (Class Xth) from Pune in March 1999 having secured 72.66% marks and more than 80% marks in Science stream. In the same year, the petitioner took admission in the Dagestan State Medical Academy, Makhachkala (Russia) to pursue degree of M.D.(Physician) course vide registration No. 182/1999. She successfully completed the said medical course and was awarded doctorate degree in Medicine on 24th June, 2006. The petitioner, in fact was awarded a red diploma (equivalent to gold medalist) in Doctor of Medicine (equivalent to M.B.B.S.) by the said University.

2. The petitioner after returning back to India appeared in Foreign Medical Graduate Examination (F.M.G.E.) Screening Test in September, 2007 but did not pass the said examination in the first attempt. The petitioner again appeared in the said examination conducted by National Board of Examination in March 2008 and has cleared the same as per communication dated 23rd April, 2008. Thereupon, the petitioner applied for provisional registration with the Medical Council of India (MCI) which stands rejected vide their letter dated 25th June,

2008. The reason given by MCI for rejection of the registration reads as under:

(1) You have joined the M.D. Physician. course in Daghestan State Medical Academy in September, 2000 whereas you have qualified your 10+2 in 2007, i.e. after obtaining the M.D. Physician. degree, which is against the regulations of Graduate Medical Education Regulation, 1997;

(2) You have not completed the age of 17 years at the time of admission in MBBS/M.D. Physician. Course.

3. The petitioner had taken admission in Dagestan State Medical Academy, Makhachkala (Russia) immediately after she had passed matriculation or Xth class examination from Maharashtra State Board of Secondary and Higher Secondary Education, Pune and she was not 17 years of age when she took admission in the aforesaid college in Russia in 1999.

4. Students who had undergone medical courses and obtained degree in Medicine from medical colleges abroad including colleges in erstwhile USSR was examined by the Supreme Court in the case of Medical Council of India Vs. Indian Doctors from Russia Welfare Associations and Others, MCI had refused to grant recognition and register the said students. Orders passed by the High Courts on writ petitions filed by the said students were made subject matter of appeals before the Supreme Court. After hearing the matter, the Supreme Court asked Government of India to formulate a policy keeping in mind the need to maintain standards and the humane problem of students who had undergone studies abroad and spending years to obtain a recognized degree in Medicine in the country of education. The Supreme Court noticed that Section 13 of the Indian Medical Council Act, 1956 had been amended by Indian Medical Council (Amendment) Act, 2001 to deal with the situation and w.e.f. 18th February, 2002 new regulations had been published and enforced. The new regulations for the first time has fixed eligibility norms/conditions and requirement to obtain eligibility certificate from MCI before taking admission in a medical college abroad. At the same time, to ensure that proper standards are maintained and the students possessed adequate and good knowledge are required to pass the Screening Test for the purpose of registration. Thus eligibility norms for taking admission abroad are fixed and at the same time students after obtaining degrees are required to pass the Screening Test.

5. Supreme Court was conscious of the problem relating to the students who had obtained degrees or taken admissions before the new Regulations were notified on 15th March, 2002. Government of India was also aware of the said problem. In these circumstances, guidelines were framed by the Government of India and placed before the Supreme Court. The Supreme Court exercising its powers under Article 142 of the Constitution of India held that these guidelines will be applicable to all students who are similarly situated whether they were parties before the Supreme Court or not. Para 6 of the guidelines and the directions given by the Supreme Court in Indian Doctors from Russia Welfare association

(Supra) read as under:

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 recognized institutions is less than six years (i.e. where a part of the study has been in unrecognized 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 recognized 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 if 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 to the minimum eligibility requirements for joining an 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. (C) The categories of students not covered in (A)(i) and (ii) above and whose entire period of study has been in a medical college not recognised by MCI, will be allowed to appear in the screening test for the purpose of their registration provided they fulfil all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be a qualification recognised for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling the minimum eligibility qualification laid down by MCI for taking

admission in an undergraduate medical course in India. They shall not be entitled to any relaxation.

6. The aforesaid Guidelines consist of two parts. The first part i.e. para 6(A) relates to students who had obtained degrees prior to 15th March, 2001 and had applied for registration with MCI prior to 15th March, 2001 and second part para 6 (B) relates to students who had taken admission in medical colleges abroad prior to 15th March, 2002.

7. In the present case, admittedly the petitioner had taken admission in the medical academy in Russia prior to 15th March, 2002 i.e. in the year 1999. Accordingly, she is covered by para 6(B) of the aforesaid judgment. Division Bench of this Court in LPA No. 1092/2006 titled Navin Sharma v. Medical Council of India and Anr. has held that para 6(B) applies to all students who had taken admission prior to 15th March, 2002 and also covers cases of multiple disabilities. The said decision is based upon the language used in para 6(B) of the said judgment which is plural. In the aforesaid judgment, contention of MCI to the contrary relying upon various non-speaking orders passed by the Supreme Court in contempt matters and other cases was considered and it was held that the said non-speaking orders do not in any way have the effect of modifying or clarifying the earlier directions issued in para 6(B) in the case of Indian Doctors from Russia (supra). Doctrine of precedent and the observations of the Supreme Court in Government of India Vs. Workmen of State Trading Corporation and Others, and Krishena Kumar and Others Vs. Union of India and others, were quoted. Reference was also made to the judgment of the Single Judge of this Court in Jishalakshi Embrandiri and Ors. v. Medical Council of India reported in 2006 (8) SLR 746 wherein it has been observed as under:

It needs to be remembered that the dismissal of a Contempt Petition does not invariably and inexorably indicate that the legal propositions on which such actions were predicated were incorrect. The only inference that can legitimately be drawn is that the Court did not view the alleged contemnors' decision or action as contemptuous, possibly because two understandings were permissible in the circumstances of the case.

8. I have noted the objection and the disabilities referred to by the respondents-MCI in the counter affidavit. The said disabilities are covered by para 6A(ii), which are covered by umbrella protection in para 6(B). Counter affidavit does not refer to disability under para 6A(i). Accordingly, the present case is covered by the judgment of the Division Bench in the case of Naveen Sharma (Dr.) (supra). Learned Counsel for MCI admits that the said judgment has been accepted and no SLP has been preferred against the said decision. MCI should be consistent and act uniformly. It cannot pick and choose and act in an arbitrary manner.

9. Learned Counsel for respondent-MCI however submitted that the said judgment should not be applied to the present case as the petitioner herein had not studied in XIth and XIIth class and in the case of Naveen Sharma (Dr.)

(supra) the student had undertaken XIth and XIIth class but had not secured 50% marks. This distinction is inconsequential and irrelevant for the purpose of para 6(A)(ii) read with para 6(B). No such distinction is made in Indian Doctors from Russia Association(Supra) which refers to minimum admission norms without any exclusion. Moreover, I may note that the petitioner in the present case, after returning to India with degree in Medicine from USSR has appeared in XIIth examination and has cleared the same.

10. Learned Counsel for MCI has relied upon of order the Supreme Court in Writ Petition (Civil) No. 11/2005 titled George Jobin Maveli v. Union of India vide Order dated 11th December, 2006. The said Order reads:

Writ Petition is dismissed.

11. Copy of the Writ Petition has not been placed on record though it is stated in the counter affidavit that the facts were identical to the present case. It is not possible to decipher and state with certainty the reasons and grounds for dismissing the said writ petition. In these circumstances, it cannot be said that the writ petition was dismissed by the Supreme Court for the reason that the students had passed Class Xth examination in India and had thereafter studied medicine abroad and obtained degree in Medicine cannot be granted registration inspite of specific direction in the case of Indian Doctors from Russia Association(Supra). I may note here that the petitioner in the present case had taken admission in the Medical Academy in Russia in the year 1999 and had continued to study there till 2006, for a period of about 7 years. In India also in some States, +2 education level is in colleges and not in school. For the same reasons, the contention of the respondent-MCI relying upon the case of Dr. Namit Bhargava v. Medical Council of India 108 (2004) DLT 404 is liable to be rejected. Petitioner has already passed the FMGE Screening Test in year 2008 conducted by National Board of Examinations, Ministry of Health & Family Welfare, Government of India. Therefore, to this extent it cannot be denied that the appellant has been able to obtain and perfect his knowledge in medicine and has been able to achieve proficiency in medicine.

11. In view of the above, the Writ Petition is allowed. Mandamus is issued to the respondent-MCI to grant provisional registration to the petitioner as she is entitled to the benefit of para 6(B) in Indian Doctors from Russia Association (Supra). No costs.