

(2020) 05 DEL CK 0076

In the Delhi High Court

Case No : Civil Writ Petition No. 3054 Of 2020

Ojasvini Agrawal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2020) 05 DEL CK 0076

Hon'ble Judges : C.Hari Shankar, J

Bench : Single Bench

Advocate : Divyanshu Kumar Srivastava, Kirtiman Singh, T. Singhdev, Puja Sarkar

Final Decision : Dismissed

Judgement

C.Hari Shankar, J

W.P.(C) 3054/2020 & CM APPL.10634/2020 (for interim relief of provisional admission and directions to respondent Nos.2 & 3)

1. This matter has been taken up for hearing by video conferencing, consequent to listing thereof having allowed by the Registrar.

2. The prayer clause, in this writ petition, reads thus:

"It is therefore respectfully prayed that this Hon'ble Court may be most graciously be pleased to:

A. To alter/modify the scope of application of 07.04.2020 notification so as to include the MBBS Doctors such as petitioner who started their internship last year and were complete it by 31st March 2020 to gain admission in NEET PG Course in May 2020 and to declare that the Petitioner is eligible to take admission in a PG Course through NEET having qualified the NEET PG Exams 2020 with top grades.

B. Alternatively, to extend the time period of completion of 1-year internship by 1 month to 30 April 2024 the Petitioner so that the Petitioner is able to gain admission this year, having cleared the NEET PG Exams 2020 and direct the Respondent No. 2 and Respondent No. 3 to ensure that in the counselling process, no college or authority should deny admission to the Petitioner on the ground of not completing 1-year internship by 31 March 2020.

C. Pass such other and further order(s) that this Hon'ble Court deems just and proper in the facts and circumstances of the case and in the interest of justice and equity."

3. If there ever was a case in which this Court sincerely regrets being unable to come to the aid of the petitioner, this is it.

Facts

4. Having secured over 93% marks in her 12th standard CBSE Board Examination, the petitioner joined the MBBS course with the School of Medical Sciences and Research, Sharda University, Greater Noida in 2014.

5. The records annexed to the writ petition reveal that, during the tenure of her MBBS Course, the petitioner remained an outstanding performer.

6. The MBBS course consists of a total of 5 ½ years, of which 4 ½ years constitute the academic part of the Course, and the last one year is devoted to compulsory internship. A Provisional Pass Certificate, as well as a Provisional Medical Registration Certificate, are issued, on the conclusion of the academic part of the MBBS course, with the final pass certificate, and the MBBS degree itself, being conferred consequent to conclusion of the internship.

7. Consequent to her successfully completing the academic part of her MBBS course in March 2019, the petitioner was awarded a Provisional Pass Certificate dated 14th March, 2019, as well as other Provisional Medical Registration Certificate, dated 25th March, 2019.

8. The petitioner commenced her one-year internship on 25th March, 2019. The said period of internship ought, in the normal course, to have been completed by 24th March, 2020 or, at the latest, by 31st March, 2020.

9. During the currency of her one-year internship, the petitioner undertook the NEET PG Examination, 2020, being the all-India examination, for admission to postgraduate medical courses in various colleges across the country.

10. The NEET PG Examination is conducted by the National Board of Examinations (NBE). Para 4 of the Bulletin issued by the NBE for the NEET PG 2020 Examination deals with the eligibility criteria, for the said examination. Clause 4.1 A), thereunder, reads thus:

"Candidates in possession of MBBS degree or Provisional MBBS Pass Certificate recognised as per the provisions of the Indian Medical Council Act 1956 and

possessing permanent or provisional registration certificate of MBBS qualification issued by the Medical Council of India or State Medical Council and have completed one year of internship or are likely to complete the internship on or before 31 March 2020, may apply for NEET-PG 2020 through online application system at website www.nbe.edu.in."

(Emphasis supplied)

Clause 4.3 makes the position more explicit:

"Requests for appearing in NEET-PG 2020 from candidates completing internship after 31st March 2020 or having qualifications that are not recognised as per the IMC Act shall be summarily rejected. Candidates are further advised not to canvass for the same.

The cut off date for completion of internship towards determination of eligibility for appearing in NEET-PG 2020 shall be 31st March, 2020."

(Emphasis in original)

11. In the result of the NEET PG Examination 2020, which was declared on 31st January, 2020, the petitioner scored the 6689th rank in the all-India Merit list. She participated in the counselling for the all-India quota seats, consequent to the NEET PG Examination, and was allotted a PG seat in the B. R. D. Medical College, Gorakhpur. As it transpires, subsequently, consequent to her participation in the counselling for State quota seats, the petitioner was offered a place in the King George's Medical College, Lucknow (hereinafter referred to as "KGMC"). For this purpose, however, she was required to submit a certificate of completion of internship which, as per the afore-extracted provisions governing the NEET PG 2020, had to reflect that she completed her internship on or before 31st March, 2020.

12. Ill luck, however, intervened. The petitioner fell ill on 29th January, 2020. As a result, she had to discontinue her internship till 13th February, 2020. Mr. Divyanshu Kumar Srivastava, learned counsel for the petitioner, informs that she started her internship on 14th February, 2020, against medical advice, with the view to completing her internship before the critical 31st March, 2020 deadline. This, however, he submits, had a toll on her health, and she fell ill, once again, on 27th February, 2020 and was, subsequently, diagnosed as suffering from Upper Respiratory Tract Infection (URTI), on 2nd March, 2020. Given the then existing coronavirus (COVID-2019) epidemic - which continues till date - the petitioner felt it prudent, and in the interests of her health and safety, not to recommence internship, with her existing URTI, till she was better. On her condition improving, the petitioner recommenced her internship on 20th March, 2020.

13. The unfortunate fallout was, however, that the petitioner was unable to complete the internship by 31st March, 2020. She did, however, complete her internship the following month, and was issued a certificate, dated 30th April,

2020, by the School of Medical Sciences and Research, Sharda University, certifying that the total internship tenure of the petitioner had been extended by 36 days, and that she had satisfactorily completed her internship on 29th April, 2020.

14. This certificate, however, renders the petitioner ineligible for admission to any PG course, consequent on the NEET PG 2020, in view of the mandate, in the Bulletin governing the said Examination, that compulsory internship was required to be completed on or before 31st March, 2020.

15. While things stood thus, on 2nd April, 2020, the Medical Council of India (MCI, Respondent No. 2 herein) issued Advisory No. MCI-23(1)/2020/Med./201867, dated 7th April, 2020, titled "Advisory regarding Completion of 12 Months of Internship by Medical Graduates commencing on/after 01 April 2020 in view of extraordinary situation due to the outbreak of COVID-19 Pandemic - Reg." Paras 4 and 5 of the said Advisory read thus:

"4. The academic session for post graduate board speciality courses in all Medical Colleges/Medical Institutions falling under the purview of the Indian Medical Council Act, 1956 commences from 1st May of the academic year. A candidate who has qualified the National Eligibility-cum-Entrance Test in order to be considered for admission to postgraduate courses, in accordance with the Scheme of Online 50% All India Quota PG Counselling: 2020-21 concerning completion of Internship requires:

v. Internship Completion Certificate/Certificate from the Head of the institution or College that the candidate shall complete the Internship by 31st March, of the year of admission.

vi. Permanent / provisional Registration Certificate issued by the MCI or DCI/ State Medical or Dental Council. Provisional Registration Certificate is acceptable only in cases where the candidate is undergoing internship and likely to complete the same on or before 31st March of the year of admission.

5. It has come to the notice of the BoG that after passing final MBBS examination some MBBS students could not join the internship in time, or could not obtain provisional registration with the State Medical Council or the internship was interrupted after start due to COVID-19 pandemic. Therefore the Board of Governors in supersession of MCI has decided the 12 months compulsory rotating internship can be completed by such students within 30th April, 2021 stop the total duration of the internship shall be 12 months only irrespective of the date of commencement. Such candidates will also be eligible to appear in PG NEET 2021 for admission in PG courses."

16. The writ petition contends that the above Advisory, dated 7th April, 2020, of the MCI, violated Article 14 of the Constitution of India, as it granted a one-month extension, for completion of internship, for candidates who were commencing their compulsory internship this year and were due to complete the

internship on 31st March, 2020, without granting similar extension, for completion of internship, for candidates who had commenced their internship last year, i.e. in 2019, and were to complete the internship by 31st March, 2020. Mr. Srivastava, echoing the submission, contends that there is no intelligible differentia, distinguishing candidates, who were to complete their internship by 31st March, 2020, and were unable to do so owing to the intervening COVID-2019 pandemic, from candidates who have to complete their internship on 31st March, 2021, and would be unable to do so, for the same reason. The impugned Advisory, therefore, in his submission, cannot sustain the scrutiny of Article 14 of the Constitution of India, unless and until similar amnesty, in the form of a one-month extension to complete compulsory internship, is extended to students who had to complete their compulsory internship by 31st March, 2020, as has been extended to students who have to complete the internship on 31st March, 2021.

17. This writ petition came up, for preliminary hearing, before this Court on 8th May, 2020. The above facts were briefly recorded by this Court, in the order passed on the said date. The order also recorded the submission, by Mr. Kirtiman Singh, learned Counsel for Respondents 1 and 3, and of Mr. T. Singhdev, learned counsel appearing for the Medical Council of India (Respondent No. 2) that no relief could be granted to the petitioner, as the inability, on her part, to complete the internship by 31st March, 2020, could not be attributed to the COVID-2019 pandemic, the illness contracted by her in February 2020, as well as, later, in March 2020, not being attributable to the pandemic. This Court, nevertheless, directed learned Counsel to take instructions as to whether any relaxation, in the cut-off date can be considered for the petitioner.

18. Though no counter-affidavit, to the writ petition, has been filed, Mr. Kirtiman Singh and Mr. Singhdev submit, in one voice, that, as per their instructions, it would not be possible to accommodate the petitioner. Had the petitioner contracted the COVID-2019 bug, or had the inability, on her part, to complete the internship, being attributable thereto, they submit that some latitude may have been possible; as things stand, however, the petitioner has never, at any point of time, suffered from COVID. Her initial indisposition, commencing 29th January, 2020, was not attributable to COVID. The URTI, which she contracted on 27th February, 2020, too, was not diagnosed as COVID. While the decision, of the petitioner, not to recommence internship till 20th March, 2020, might, in part, be attributable to the COVID-2019 pandemic, in that, as a patient already suffering from URTI, she did not deem it appropriate to expose herself to infection, that, by itself, submit learned Counsel, cannot operate as a consideration, to extend the last date for completion, by her, of her compulsory internship.

19. I confess, with great reluctance, that I am compelled to accept the submissions of Mr. Kirtiman Singh and Mr. Singhdev, in preference to those of Mr. Srivastava. Mr. Srivastava was candid in accepting that the petitioner did not, at

any time, actually suffer from COVID, i.e. the coronavirus-2019 infection. Neither could her indisposition, which commenced on 29th January, 2020, nor could the subsequent URTI, to which she fell prey on 27th February, 2020, be attributed to COVID. Mr. Srivastava does not dispute this factual position. At the same time, he submits that, had the COVID-2019 pandemic not intervened, the petitioner might have recommenced her internship before 20th March, 2020 and, possibly, completed it on or before 31st March, 2020. Her inability to do so, he submits, was owing to the COVID-2019 pandemic, and the especial susceptibility, to infection, of persons suffering from comorbidity in the form of respiratory infection. This, he submits, should be sufficient to justify grant of relief to his client.

20. I am unable to accede to the submission. There is, admittedly, nothing to indicate that, at any point of time, the petitioner suffered from COVID. Neither could her initial indisposition, w.e.f. 29th January, 2020, nor could her subsequent URTI, starting 27th February, 2020, be attributed to COVID. The petitioner might have been well advised not to recommence internship, as a sufferer of URTI, during the currency of the COVID-2019 infestation; that, however, was a decision taken by the petitioner herself, admittedly in her best interests. That, by itself, however, cannot justify a finding, by this Court, that, owing to the COVID-2019 pandemic, the petitioner was unable to complete internship by 31st March, 2020.

21. The certificate of completion of internship, dated 30th April, 2020, issued to the petitioner by the School of Medical Sciences and Research, Sharda University, notes that her internship tenure was extended by 36 days. Of these 36 days, at best, it could be said that the delay, in the commencing, by the petitioner, of her internship till 20th March, 2020, was because she did not want to fall prey to the COVID-2019 infection. There is nothing, however, to indicate when, after recovery from URTI, the petitioner was in a position to recommence her internship, or how many days she lost, as a result of her decision not to take a risk. These are all within the realm of the imponderables, and this Court cannot hazard any guesses, merely so as to grant relief to the petitioner. Even otherwise, the period of her compulsory internship would still stand extended, beyond 31st March, 2020, by a fair number of days, which could not even be linked, far less attributed, to the COVID-2019 pandemic.

22. I may refer, with advantage, in this context, to the judgement of the Supreme Court in *Dolly Chhanda v. Chairman, JEE* (2005) 9 SCC 779, in which a bench, of three Hon'ble Judges of the Supreme Court, underscored the distinction between possession of requisite qualifications, and submission of proof of possession of requisite qualifications, to secure admission. It has been categorically held, in the said decision, that, in regard to possession of requisite eligibility qualifications, by the cut-off date fixed in that regard, there can be no relaxation. Once, however, a candidate possesses the requisite qualifications, by the stipulated cut-off date, depending on individual facts and circumstances, it

might be possible to relax the date by which the candidate is required to submit proof of possession of such qualification. In the present case, 31st March, 2020, stands expressly stipulated as the cut-off date by which any candidate, who seeks to obtain admission to a PG medical course, consequent to the NEET PG 2020 examination, is required to complete her, or his, compulsory internship. There can, therefore, be no relaxation in this regard, least of all by a writ court.

23. In the circumstances, the submission, of Mr. Srivastava, regarding the impugned Notification, dated 7th April, 2020, being discriminatory and violative of Article 14 of the Constitution of India, is not required to be seriously addressed.

24. Even otherwise, the prayers in the writ petition, as advanced, cannot be granted by this Court. Prayer A, as extracted hereinabove, effectively seeks that this Court, exercising its jurisdiction under article 226 of the Constitution of India, should "alter/modify the scope of application" of the said notification, "so as to include the MBBS doctors such as Petitioner who started their internship last year and were to completed by 31 March 2020" and, consequently, to declare that the petitioner was eligible for admission to PG course, consequent to her succeeding in the NEET PG 2020 examination. This Court, in exercise of its writ jurisdiction, cannot modify the Circular, issued by the MCI, by engrafting, into the Circular/Advisory, a benevolent dispensation, not to be found therein. The writ jurisdiction of this Court does not extend to formulating policies, or even to direct, to the executive, to formulate policies, far less to modify a policy already formulated.

25. The alternative prayer B, in the writ petition, which seeks extension of the period of completion of one-year internship, by one month, to 30th April, 2020, qua the petitioner, "so that the petitioner was able to gain admission this year", too, requires merely to be urged to be rejected. The duty of this Court, while exercising jurisdiction under Article 226 of the Constitution of India, is to administer the law, without fear or favour, and not to ensure that the petitioners, before it, secure the reliefs they seek, irrespective of the law. Ubi jus, as the time-worn adage goes, ibi remedium. The right has, therefore, to precede the remedy. Sans an enforceable legal right, there can be no remedy, in law. The provisions in the Bulletin issued by the NBE, governing the NEET PG 2020 Examination, as extracted hereinabove, reveal repeated emphasis - to the extent that the Bulletin highlights the said clauses - on the cut-off date of 31st March, 2020, for completion of compulsory one-year internship, by MBBS candidates. This Court, in exercise of its writ jurisdiction, does not deem it appropriate to tinker therewith, or to direct that, in the case of the petitioner, the said date should not be treated as sacrosanct. Charity to one, in the teeth of the law, results in injustice to the multitude.

26. Resultantly, this Court regrets that it is unable to come to the aid of the petitioner.

27. The situation, at the very least, is unfortunate. Owing to no fault of hers, a deserving candidate - who may, in time, have blossomed into a competent medical practitioner - is losing out, on securing admission to a PG course, despite having, all along, been an outstanding performer. This Court unhesitatingly commends her efforts, in the face of physical adversity. While this Court is unable, in administering the law as it stands, to grant succour to the petitioner, it is clarified that this judgement shall not stand in the way of the MCI, or the KGMC, accommodating her, should they so choose, if otherwise admissible.

28. With the said observations, this writ petition, being devoid of merit, has necessarily to fail, and is dismissed accordingly, with no orders as to costs. Needless to say, the application for interim relief does not survive for consideration.

29. Copy of this order be also forwarded to the counsel for the parties via email.