

(2013) 09 DEL CK 0506

In the Delhi High Court

Case No : Writ Petition (C) 6452 of 2012

Prashant Kumar Gupta and Others

APPELLANT

Vs

Medical Council of India and Others

RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A, 13, 13(4A), 25(1), 3

Citation : (2013) 09 DEL CK 0506

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

Bench : Single Bench

Advocate : Ashish Bhagat and Mr. Abdhesh Chaudhary, for the Appellant; Ashish Kumar, Avijit Mani Tripathi and Mr. Rituraj Kumar for MCI and Mr. Sunil Kumar, Rajiv Ranjan Mishra and Mr. Ankit Tyagi, Advs for Respondents 2 and 3, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioners before this Court took admission in Doctor of Medicine course of a foreign university, namely, Khazar University, at Baku in Republic of Azerbaijan. The first year of the said course was pursued by the petitioners at Sidhant Institute of Medical Services and Research, Pune, which was an off campus centre of Khazar University in India. They also obtained Eligibility Certificate from Medical Council of India which was necessary, in terms of "Eligibility Requirements for taking admission in undergraduate medical course in a Foreign Medical Institution Regulations, 2002", (hereinafter referred to as "Eligibility Regulations"). The petitioners left for Baku in Azerbaijan on 29.10.2007, and completed their course in September, 2011. The petitioners were issued completion certificates and degree certificates by the Khazar University. It was also certified by the said University that the petitioners fulfilled the admission criteria of the University and thus successfully admitted to the said University. The petitioners appeared in a screening test conducted by National Board of Examination on 25.03.2012, in terms of Screening Test Regulations, 2002 and successfully passed the said screening test. The petitioners, thereafter,

submitted applications seeking provisional registration u/s 25(1) of the Indian Medical Council Act, 1956 (hereinafter referred to as the "IMC Act"). However, their applications for grant of provisional registration were rejected by MCI vide communication dated 26.09.2012. Being aggrieved from such rejection, the petitioners are before this Court seeking the following relief:-

(a) issue appropriate writ or order directing the setting aside of the Medical Council of India's decision dated 26.9.2012 (Annexure P-6) to reject the applications made by the petitioners for grant of provisional registration u/s 25(1) of the Indian Medical Council Act, 1956;

(b) issue appropriate writ or order to direct the respondent no. 1 to issue provisional registration certificates to the petitioners;

(c) pass an ex parte ad interim order/directions in terms of above prayers, pending the admission, hearing and final disposal of this petition.

In its counter-affidavit, the respondent-Medical Council of India has stated that since foreign universities are not permitted to establish campus in India, they had, by way of a public notice dated 15.08.2006 cautioned the members of the general public from seeking admission to the Universities which were offering study partly in India and partly in foreign universities. The attention of the members of the public was drawn to Section 10A of MCI Act which prohibits medical colleges from starting any medical course, which would enable student for the award of any recognized medical qualification, except with the previous permission of the Central Government. It was also stated in the said public notice that as per Regulation 9 of Screening Test Regulations, the eligibility certificate was valid only for the candidates who joined a medical institution outside India to obtain a primary medical qualification and for undergoing the screening test on return to India. It was further stated in the said public notice that the Eligibility Certificate could not be used by any student to join any institution in India which was not granted recognition by the MCI, on the pretext that the degrees were purportedly awarded by foreign universities. The students were cautioned that use of the Eligibility Certificate to enroll part of study in India and part of study abroad being not permitted, and such a use may result in the cancellation of the Eligibility Certificate by MCI, in accordance with the provisions of the Screening Test Regulations. It is also stated in the counter-affidavit that on coming to know of Sidhant Institute of Medical Science and Research being run as an off-shore campus of Khazar University, they had written a letter to the Dean/Principal of the said institute informing him that starting and running a medical institution in India, without prior permission of the Central Government u/s 10A of Medical Council Act, 1956, was illegal.

2. The direction issued by the Medical Council of India for closure of Sidhant Institute of Medical Services and Research was challenged by Khazar University as well as by the Society running Sidhant Institute of Medical Services and Research before Bombay high Court by way of Writ Petition No. 8497 of 2006.

Vide order dated 17.09.2007, Bombay High Court appointed a team of doctors and police officials to inspect the facilities at the said institute. The said team, on inspection, found that teaching facilities were almost non-existent in the said institute. A number of other deficiencies were found by the inspecting team in the functioning of the said institute. Thereafter, the aforesaid writ petition was withdrawn by the petitioner. During hearing of the said writ petition, a statement was made by Khazar University that it had shifted its campus to Mauritius.

3. The Provisional Certificate is being denied to the petitioners on the grounds that:

i. They completed one part of their study in India and the remaining part in Khazar though they were required to complete the entire course of study outside India.

ii. They did not disclose, at the time of seeking Eligibility Certificate that they had already taken admission and were studying in the off-shore campus centre of Khazar University at Sidhant Institute of Medical Services and Research, Pune, which was set up without obtaining prior permission of the Central Government u/s 10A of the IMC Act, 1956.

iii. The faculty and other infrastructural facilities available at Sidhant Institute of Medical Services and Research, Pune, an off-shore campus centre of Khazar University in India were grossly inadequate, in terms of the norms prescribed by MCI.

4. Regulation 4 of the Screening Test Regulations, 2002 framed by the Medical Council of India, with the previous sanction of the Central Government in exercise of the powers conferred by Section 3 of the IMC Act, 1956, reads as under:

4. Eligibility Criteria: No person shall be allowed to appear in the screening test unless:

(1) he/she is a citizen of India and possesses any primary medical qualification, either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organisation; or which is confirmed by the Indian Embassy concerned to be a recognised qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated;

(2) he/she had obtained "Eligibility Certificate" from the Medical Council of India as per the "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002". This requirement shall not be necessary in respect of Indian citizens who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002.

Admittedly, the petitioners before this Court fulfilled both the above-referred

requirements since they are citizens of India and this is not the case of MCI that they do not possess the primary medical qualifications as defined in Regulation 2(f) of the Eligibility Regulations, as admittedly, Khazar University is included in the World Directory of Medical Schools published by the WHO and the petitioners had also obtained Eligibility Certificates from the Medical Council of India in terms of the Eligibility Regulations.

5. The case of the respondent-Medical Council of India, is that since the petitioners pursued part of their studies in India and part in a foreign university, they were not eligible for issue of eligibility certificate under the Regulations framed by the MCI. This is also their contention that since no permission in terms of Section 10A of the IMC Act was given by the Central Government for establishing Sidhant Institute of Medical Services and Research at Pune, setting up of the said institution in India was illegal. Rebutting the contentions of the respondent in this regard, the learned counsel for the petitioners submitted that Medical Council of India itself has granted provisional registration to a number of persons who studied partly in India and partly abroad and, therefore, it is not open to the Council to refuse provisional registration to the petitioners on the said ground. As regards contention that Sidhant Institute of Medical Services and Research, Pune was set up without requisite permission of the Central Government u/s 10A of the Act, the learned counsel for the petitioners relied upon the decision of the Supreme Court in *Medical Council of India Vs. J. Saai Prasanna and Others etc. etc.*,

6. A perusal of the decision of the Apex Court in *Medical Council of India Vs. J. Saai Prasanna & Ors.* case (supra) would show that in the aforesaid case some of the petitioners before the Court did the first two terms at Katuri Medical College & Hospital, Guntur, which at that point of time was an unrecognized medical college and the last term at Tanzania. After successful completion of their course, the petitioners in that case underwent the screening test. Some of them were declined provisional registration, some were granted provisional registration but were not granted permanent registration and in some cases the permanent registration was subsequently cancelled. Being aggrieved, the petitioners approached the High Court of Andhra Pradesh. The petitions were resisted by the MCI primarily on the following grounds:

(i) where an Indian student does any study in a medical college in India, established without the permission from the Central Government u/s 10A of the Act, is automatically disqualified from getting recognition of his medical degree, even if such degree is granted by a foreign University; and

(ii) if a student's primary medical qualification is not a recognized qualification for enrolment as a medical practitioner in the country in which the Institution granting the medical qualification is situated, he will not be entitled to participate in the screening test examination.

The High Court while allowing the writ petitions inter alia held as under:

8. The High Court by the impugned judgment elaborately considered the various issues with reference to section 13(4A) of the Act and Regulation 4 of the Screening Regulations, and answered the questions of law as under:

(i) When the Parliament chose to treat all Indian citizens who obtained medical qualification from abroad as one category, there is no scope to resort to classifying those who underwent part of the course in Indian institutions as a separate category.

(ii) Medical qualification granted by IMT University, Tanzania, is recognized for enrolment as a medical practitioner in Tanzania and it is neither specifically nor impliedly excluded from the purview of Section 13(4A) of the Act.

(iii) Once a Medical Graduate of a foreign university qualifies the screening test, the primary medical qualification acquired by such person from the medical institution abroad is deemed to be a recognized medical qualification for the purposes of the Act. Such person cannot be denied grant of permanent/provisional registration.

Dealing with the contentions of the MCI, the Apex Court inter alia observed and held as under:

10. MCI contends that where student of a foreign University undergo a part of his training in an Institution in India which has not obtained the permission from the Central Government/MCI, as required u/s 10A of the Act, such students are not eligible for registration as medical practitioners in India. The requirements for recognition of a medical qualification granted by a medical institution outside India are different from requirements for recognition of medical qualification granted by Universities or medical institutions in India. It is no doubt true that if a student in India, does a course of study in medicine in a medical college in India which does not have the permission of the Central Government u/s 10A of the Act, the medical qualification granted to any student of that college will not be a recognized medical qualification for the purposes of the Act and consequently such student will not be entitled to be enrolled in the India Medical Register or State Medical Register.

11. But medical qualifications granted by medical institutions outside India are dealt within a special provision, that is Section 13(4A) of the Act. Necessarily, for examining the validity of the medical qualification granted by a medical institution in any country outside India, the norms and tests of the country where the medical institution is situated, will have to be fulfilled for recognition of the degree in that country and the norms that are prescribed by the Indian Medical Council Act, 1956 in regard to Indian medical institutions will have no relevance. So long as the medical institutions in a country outside India has granted a medial qualification and that medical qualification is recognized for enrolment as medical practitioner in that country, all that is required for the purpose of enrolment in the medical register in India is qualifying in the screening test in India.

12. In the case of persons who obtained a medical qualification in a medical institution outside India, the question as to where the course of study was undergone is not relevant. The course of study could be in that country or if the norms of the Medical Council of that country so permitted, the course of study could be partly in that country and partly in another country including India. Once that country recognizes a medical qualification granted by the institution in that country for the purpose of enrolment as a medical practitioner in that country, and such medical degree holder passes the screening test in India, the Medical Council of India cannot refuse to recognize such degree on the ground that the student did a part of his study in an Institution in India as a part of his medical study programme for the foreign institution.

13. As stated above, as far as the provisions of the Act at the relevant point of time, all that was required for an Indian citizen holding a medical qualification from a foreign country for being enrolled in the medical register was that he should qualify in the screening test in India. Therefore, the fact that such a medical graduate underwent a part of the medical course of a foreign university, in an Indian college which was not recognized in India, will not be relevant.

In view of the authoritative pronouncement of the Apex Court, the petitioners cannot be refused provisional registration on the ground that they had studied in an off-shore campus centre of Khazar University situated in India, which was set up without prior permission of the Government in terms of Section 10A of the IMC Act.

7. The main difference, which I find in the case of the petitioners before the Apex Court and the petitioners before this Court is that at the time the petitioners in J. Saai Prasanna & Ors. (supra) took admission, Eligibility Regulations of 2002 were not in force whereas the petitioners before this Court took admission after the said Regulations had already come into force. The question which comes up for consideration is as to whether the petitioners were eligible for grant of Eligibility Certificate in terms of the aforesaid Regulations or not. As noted earlier the Apex Court in J. Saai Prasanna & Ors. (supra) rejected the contention that if a person studies partly in an off-shore campus of a foreign university situated in India and partly in the main campus of such university he is not entitled to grant of provisional registration.

8. Regulation 3 of the Eligibility Regulations, which is relevant for our purpose reads 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.

Admittedly, the petitioners passed their qualifying examination as defined in Regulation 2 (f) of the Eligibility Regulations, in India meaning thereby that they

were eligible for admission to the MBBS course in India in terms of Graduate Medical Education Regulations, 1997. This is also not in dispute that the petitioners had joined an undergraduate course in Khazar University which is a foreign medical institution. Therefore, the petitioners fulfilled both the requirements of Regulation 3 of the Eligibility Regulations. Once the petitioners had taken admission in a foreign medical institution it was immaterial whether they studied part of their course in India in an off-shore campus centre of the institution and partly on the main campus or wholly in the main campus of the foreign medical institution. This was not the requirement of the Regulations, at the time the petitioners took admission in Khazar University that they will have to study for the medical course at the same institute located abroad for the entire duration of the course from where they obtained the degree. This requirement has been added to the Screening Test Regulations only by way of an amendment in the year 2010, and, therefore, cannot apply to the petitioners, they having taken admissions much earlier than the aforesaid amendment was made. In fact, the amendment made in the year 2010 is also indicative of the fact that prior to the said amendment this was not the requirement of the Regulations that the person seeking registration must necessarily have studied abroad for the entire duration of the course. There was an obvious lacuna in the Regulations as a result of which it became possible to study partly in India and partly abroad, after taking admission in a foreign medical institution and the said lacuna came to be filled up only in the year 2010. Moreover, despite coming to know that the petitioners had studied partly at the offshore campus of the Khazar University at Pune and partly at its main campus abroad, the respondent-MCI did not withdraw/cancel the eligibility certificate which it had issued to the petitioners. Regulation 5 of the Eligibility Regulations is relevant in this regard and reads as under:

5. The Council shall be free to investigate on its own into the correctness of information furnished by the candidates in his/her application and/or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/she shall stand debarred from appearing in the screening test prescribed in sub-section (4A) of section 13 of the Indian Medical Council Act, 1956 without any notice. The decision of the Council in this regard shall be final.

If the petitioners had furnished any false information or withheld any material information, MCI could have withdrawn the eligibility certificate issued to the petitioners. However, that having not been done presumably on account of the fact that MCI itself has granted provisional registration to a number of persons despite their having studied partly in India and partly abroad, it is not open to it to deny provisional registration to the petitioners at this stage when they have already appeared in the Screening Test and claim to have passed the said test.

9. It was also contended by the learned counsel for the MCI that while seeking Eligibility Certificate the petitioners did not disclose that they had already obtained admission in Khazar University. That, to my mind, would be of no consequence unless MCI can show that had such a disclosure been made Eligibility Certificate could not have been issued to the petitioners.

As noted earlier, Regulation 3 of the Eligibility Regulations prescribes only two requirements for grant of Eligibility Certificate-the first being that the registrant should be an Indian citizen who passed the qualifying examination from India; and the other being that he should be joining an undergraduate medical course in a foreign medical institution on or after 15.3.2002. This is not the case of MCI that the petitioners are not Indian citizens or had not passed the qualifying examination as defined in Regulation 2 (f) of the Eligibility Regulations from India. Khazar University not being an Indian university or institution would certainly be a foreign medical institution in terms of Eligibility Regulations, which otherwise do not define the expression "foreign medical institution". In any case, if the petitioners on account of their already having taken admission in the year 2006 were not eligible for grant of eligibility certificate, nothing prevented the respondent-MCI from cancelling their Eligibility Certificates. In fact, this issue is no more res integra and stands concluded by the decision of this Court dated 13.12.2010 in WP (C) No. 5055/2010 titled Shambhavi Sharma Vs. National Board of Examinations & Anr. and the decision dated 10.2.2012 in WP (C) No. 11082/2009 titled Pawan Kumar Gupta & Ors. Vs. Medical Council of India & connected matters. Therefore, to seek Eligibility Certificate before taking admission may not be a mandatory requirement of the Regulations.

10. As regards the contention that Sidhant Institute of Medical Services and Research, Pune was not well equipped, the learned counsel for the respondent relied upon the inspection report submitted to Bombay High Court, extract from which has been reproduced in the counter affidavit. In my view, the faculty and other infrastructural requirements prescribed by the Medical Council of India for Indian medical colleges and institutions cannot ipso facto be applied to the foreign universities. There is no material on record to show as to what were the faculty, infrastructural and other requirements stipulated by Khazar University for the first year of its Doctor of Medicine course. In the absence of such particulars it may not be known whether the off-shore campus centre of the Khazar University, Sidhant Institute of Medical Services and Research, Pune, complied with such requirements or not. Moreover, it was for Khazar University to ensure compliance of the Rules made by it with regard to faculty and infrastructure and other requirements in its off-shore campus centres and Medical Council of India would have no role to play in such matters. If Medical Council of India felt that the faculty and infrastructure available at the Pune offshore campus centre of Khazar University were not adequate in its opinion, it could just have brought the deficiencies found during the course of inspection carried out on 18/19.9.2007 directly to the notice of Khazar University and suggested to it to ensure the availability of qualified faculty in adequate number and such infrastructure, as, in

the opinion of the Council, would be necessary for the students pursuing the first year of their Doctor of Medicine course at the off-shore campus centre in Pune. Such a course of action, however, was never adopted by MCI. Had that been done, may be Khazar University would have looked into the suggestion of MCI matter and required the students studying at Pune off-shore campus centre to undergo additional studies or it might even have refused to grant degree to them if in its opinion, the faculty and infrastructure available at the said centre were not adequate.

11. In law, however, MCI cannot regulate the faculty and other infrastructural requirements in a foreign university including an offshore campus centre of a foreign university, even if the said off-shore campus is situated in India. Neither the Eligibility Regulations nor the Screening Test Regulations envisage any such control by MCI as a prerequisite condition for issue of Eligibility Certificate and/or permitting the candidates obtaining medical education from a foreign university to sit in the Screening Test. Had the petitioners studied at the main campus of the foreign university throughout the course, MCI would not have been in a position to even know, what was the number of faculty members vis-?-vis the number of students and what was the other infrastructure available in the said university. Even in the case of the petitioners who have completed the first year of their course at the offshore campus of a foreign university situated in India and the remaining years of the said course at Baku, MCI would have no opportunity to verify what were the faculty and other infrastructure available at the main campus of the university during the second, third, fourth and fifth year of their study. It is only the foreign university and the authorities in the foreign country which can prescribe and regulate the faculty and other infrastructural requirements in the foreign universities and MCI has no role to play in their functions. What is important in this regard is that this is not the requirement of the Regulations framed by MCI that the faculty and other infrastructure available in a foreign university for admission to which Eligibility Certificates are issued by it or the degree holder of which are permitted to sit in the Screening Test, should be at par with or higher than the teaching and other infrastructure prescribed by the MCI and medical institutions in India. Therefore, it was for Khazar University and not for MCI to take a view on the adequacy or otherwise of the faculty and other infrastructure available in the offshore campus centre of the said university in India. For the reasons stated hereinabove, the respondent-MCI is directed to grant provisional registration u/s 25(1) of the Indian Medical Council Act, 1956 to the petitioners in case they have passed the Screening Test held on 25.3.2012.

The writ petition stands disposed of.