

**(1998) 11 J&K CK 0053**  
**In the Jammu And Kashmir High Court**  
**Case No : SWP No; 1708 Of 1998**

Rajeev Kumar and others

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision :** 12-11-1998

**Acts Referred:**

Indian Medical Council Act, 1956 — Section 32, 33

**Citation :** (2000) 3 SCT 131 : (1999) 2 SriLJ 300 : (1999) SriLJ 300

**Hon'ble Judges :** T.S.Doabia, J

**Bench :** Single Bench

**Advocate :** Sunil Sethi , N.Dubey, B.S.Salathia, Abhinav Sharma , Advocates  
appearing for the Parties

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## Judgement

1. The refusal on the part of Medical Council of India to recognize a degree given by the University of Tashkant (an erstwhile member of the Union of Soviet Social Republic) is the subject mater of challenge in this petition.

2. The petitioner had got admission in State Medical Institute Tashkant, Uzbekistan. Previously this institute was having course of study which had a duration of six years. Later on this period of study was reduced to 5.1/2 years. At the same rime, it was mentioned that even though the duration of course is being reduced so far as the number of days is concerned but so far as the number of hours which a student had to undergo would remain same. This becomes apparent when annexure ""D"" is persued. This reads as under:

This is to clarify that according to the new programme the course of M.D General Medicine in Tashkent State Medical Institute 2nd comprises of

a duration of 5.1/2 years instead of 6 years, as per the old programme. The number of hours routine and the subjects completed by the students is

equivalent to that of 6 year course. On successfully completing the 5.1/2 years course we have awarded the student with the degree of M.D

General Medicine"".

3. The basic argument raised by the learned counsel for the petitioners is that the petitioners having completed their course of study, are entitled to

registration and the Medical Council of India is not competent to refuse registration.

4. Notice of this petition was given to respondents. They have been served. They have not filed counter affidavit. Last opportunity to do the

needful was given on 5th of October 1998.

5. What appears to be the impediment in way of petitioners in getting the registration can be spelled out when communication of Medical Council

of India which has been placed on record is perused. This has been place on the record as annexure ""C"". This communication was issued on 6th of

March 1998. A decision taken by the executive Committee of Medical Council of India was conveyed. This decision taken on 23rd Oct1997, is

being notice below: The students who complete their medical degree course of less than 6 years duration from institutions in erstwhile USSR shall

not be eligible for registration because of the fact that the duration of M.D. (Physician) course is 6 years, after one year preparatory/language

course.

6. The learned counsel for the petitioners submits that there was no earlier stipulation debarring the candidates who had undergone the course of

study in the Universities located in the erstwhile USSR and it is for the first time a bar is being created. According to the counsel, if this was to be

done, then it was incumbent upon the Medical Council of India to take resort to Section 32 and 33 of the Medical Council Act. It is urged that

Regulations are supposed to be framed with a view to regulate its business. These could be issued only with the prior approval of the Central

Government. This as per the counsel appearing for the petitioners is indicated in section 33. This as per the petitioners has not happened in this

case.

7. Section 32 deals with the powers to make the rule, all rules which are framed are to be laced before both the Houses of Parliament. So far as

Section 33 is concerned it deals with the power to make regulation power to

make regulations exist, but this has to be done with the previous sanction of the central Government. This as per the counsel has not been done. It is, therefore, submitted that the restrictions imposed by the Medical Council of India is a restriction which cannot be sustained in the eyes of law and these cannot operate to the prejudice of the petitioners.

8. Independently of above, it is urged this restrictions would have prospective effect only. These cannot be made applicable to those persons who joined the course of study earlier to the passing of the resolution referred to above.

9. A perusal of the decision taken by the Medical Council of India indicates that this decision is to the effect that the students who have completed their Medical degree courses in less than six years duration are not eligible for registration because the duration of M.D. Course duration has be six years.

10. Question arises as to whether this decision of the respondent Medical Council is in terms of Medical Council Act, 1956.

11. Procedure which is to be adopted in the matter of promulgation of regulations has been indicated in Section 33 of the Act. The regulations framed under this section become effective only if the requirement of Section 33 (1) (2) are fulfilled. A person who has requisite qualification is

entitled to get his name included in the register maintained by the Medical Council of India. Under what terms and conditions a person is eligible can be prescribed by the regulations. As to what procedure is to be adopted in this regard was considered by the Division Bench of Bombay High

Court in case reported as Dr. Arun H.Bakle Vs. Union of India and others AIR 1986 Bombay 230. What was observed by the Division Bench is

being quoted below: "" Apart from the form of it the two essential requisites for promulgating any Regulation Under S. 15 read with S.33 are that

(1) the Medical Council of India should first frame them as Regulations and (2) obtain the previous sanction of the Central Government. They

should then to be published as Regulations for the citizen have to comply with them. Every decision taken by the Medical Council of India even

with the approval of the central Government does not of itself become a regulation under the Act. The Regulation may govern the internal

administration of the Council itself or may affect the rights of the third parties

such as the petitioner, the letter relied upon by the learned counsel for the Medical Council of India is not in terms a Regulation nor does it refer to any previous approval or prior sanction of the Central government.

It was further observed:

Even assuming that it is a regulation in our view it cannot override the provisions of the Act especially subS(3) of S. 13 and S. 15 which entitle a

person possessing a degree referred to in part II of the Third Schedule and who has undergone practical training in the county which awarded him

the qualification as required under the rules governing grant of such medical qualification s with out being required to undergo further training in

India. Subsec( 10 of S. 15 which declares such medical graduate's right to be enrolled is subject only to the other provisions of the Act. There is

no other provision of the Act so far as such medical graduates as the petitioner who have undergone as training as part of their course of study are

concerned to undergo further training in India. That being a right conferred by the Act no subordinate legislation like a regulation envisaged by S.33

can take away the right by imposing a further condition for S. 15(1) is only subject to the provisions of the Act and not to any rule or regulation

made therunder. Any rule or Regulation for such a medical graduate to be enrolled can only prescribe the form or the fee payable for registration

and not prescribe any additional qualification thereby taking away his right to be enrolled, the Medical Council of India in communicating the

aforesaid letter purports to prescribe as additional qualification or a condition to be acquired or fulfilled by the petitioner to entitle him to be

enrolled on the State medical Register. Any such Regulation cannot over ride or modify the provisions of the Act so as to take away the right

vested in a citizen under the Act. However, bona fide such power may be exercise no subordinate legislation can override the provisions of the

Act"".

12. The above observations made by the Division Bench of Bombay High Court would be squarely attracted to the facts of the case. Unless and

until Regulations are framed in terms of the provisions noticed above, administrative instructions cannot have the force of law. What was said by

the Supreme Court of India in the case reported as V.T.Khanzode Vs. Reserve Bank of India AIR 1982 SC 917 would be attracted to the fact of

this case. In the above, it was observed that where an authority is vested in statutory body to frame rules and regulations it can rely upon

administrative instruction, but these instructions cannot override the provisions of the Act. It is rightly urged that letter issued by the Medical

Council of India which letter has been reproduced above, has not been issued in exercise of power conferred under Section 33 of the Act and as

such it would not have overriding effect.

13. Precise question has again been considered by the Delhi High Court in the case reported as Dr. Meenakshi Vs. union of India and Others AIR

1998 Delhi 344, petitioner in the above case completed her entire medical education in a recognised Institute outside India. She has also

completed requisite internship. It was accordingly observed that Medical Council of India would be under an obligation to register all these

students. Dalveer Bhandari judge, of Delhi High Court took note of provisions of section 33 of medical Council act and observed that if the basic

requirements of section 55 are fulfilled then Medical Council cannot refuse to register the candidates. Petitioners have also placed reliance on

unreported judgment of Delhi High Court in Civil writ petition NO. 3599 of 1997. This was decided on 18th of September 1998. View expressed

is again to the affect that the Medical Council is not within its right to not to register the candidates who have completed studies in foreign

institutions.

14 In another case Dr. Ar. Dhendu Shekhar pandy vs. Union of India and others (78(1998)DLT.187(sic)) the students had completed some part

of his education in an unrecognised institute, following the disintegration of USSR. The High Court as a one time measure, directed the Medical

Council of India to permit the candidate to complete his internships and to given some extra coaching or special course. If the Medical Council of

India was of the opinion that the same was required.

15. In view of the above, discussion I am of the opinion that the Medical Council of India was not justified in issuance instruction which have been

noticed above, it may also be seen that instructions which are being relied upon by the Medical Council of India, dealt only with one discipline. This

is with regard to discipline of M.D. Physician. Other disciplines have been left as they are. For this reasons also it can be said that Medical Council

of India has not applied its mind. Decision taken to not to register the petitioner is not justified. Institution from which the petitioners acquired their

degree has categorically stated that there is only reduction in the number of days. So far as number of hours are concerned, these have been

indicated number of hours remains the same. If above be the position then it can safely be concluded that the petitioners have undergone full course

of studies.

I am accordingly of the view that the Medical Council of India is not justified in not to grant the registration to the petition, this is because;

i/ Decision dated 23rd October, 1997 conveyed through letter dated 6th March, 1998 can not have the force of regulation,

ii/ In order that a decision assumes the shape of a regulation it must be framed by following procedure indicated in Section 33 of the Medical

Council Act. this has not happened in this case.

iii/ Merely because of number of days has gone down is no ground to hold that students have not completed their courses when number of hours of

study has been increased,

iv/ The decision contained in letter dated 6th March, 1998 applies only to the discipline of M.D. Physician. This cannot have the effect of debarring

others. This petition is allowed. Respondent Medical Council would now register the petitioners in accordance with law. Let the petitioners be now

registered within two months of the receipt of the copy of this order. There would be no order as to the costs.