

(2009) 05 DEL CK 0134

In the Delhi High Court

Case No : LPA 133 of 2009 and WP (C) No. 7768 of 2009 and CM No. 4431 of 2009

Sarat Chandra Bose Patsamatla

APPELLANT

Vs

National Board of Examination

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Constitution of India, 1950 — Article 142, 32
Foreign Medical Institution Regulations 2002 — Regulation 2
Indian Medical Council Act, 1956 — Section 13

Citation : (2009) 160 DLT 368

Hon'ble Judges : A.P. Shah, C.J; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Vikram Singh, for the Appellant; Rakesh Gosain, for Respondent No. 1, T. Singhdev, for Maninder Singh, for the Respondent

Judgement

1. The Letters Patent Appeal has been filed by the original writ petitioner against the order of the learned single Judge dated 25th March, 2009 refusing to permit him to appear in the FMGE- Screening Test conducted by the respondent No. 1 on 29th March, 2009 and at later stages. Pursuant to the interim order of the Division Bench, the appellant was provisionally allowed to appear in the FMGE- Screening Test conducted by the Board on 29th March, 2009 and he failed in the examination. Next examination is scheduled to be held in September, 2009.

2. Learned Counsel appearing for the parties agreed that the writ petition be also taken up for hearing along with the present appeal. Accordingly, we have heard submissions of the parties on the appeal as well as on the writ petition.

3. The appellant after completing 10+2 examination joined Zaporozhye State Medical University, Ukraine to study medicine. This University falls in the WHO Directory of recognized medical colleges as also it falls under the list of medical colleges recognized by respondent No. 2, Medical Council of India (in short "MCI"). The appellant took admission in the said University in the year 1997 and

he was awarded Diploma of Specialist in Medicine in the year 2003. The appellant when came back to India after obtaining the Diploma, as per the MCI Regulations wanted to appear in the Screening Test conducted by respondent No. 1, however, he was denied permission on the premise that he was not having Biology as a subject in Intermediate Examination. He, therefore, invoked writ jurisdiction of this Court seeking that the respondent No. 1 be directed to allow him to appear in the Screening Test going to be held on 29th March, 2009 and in the subsequent tests.

4. The writ petition has been opposed on behalf of the respondents who had taken an objection in their counter affidavit that the petitioner was not eligible to undertake the Screening Test inasmuch as he had passed his 10+2 examination without Biology. The respondents had placed reliance on the "Regulations on Graduate Medical Examination, 1997" and have urged that the petitioner was not entitled to pursue the graduate medical course either in India or abroad and as such, has no enforceable right in the present writ petition. According to the respondents, the Regulation 2(h) of the "Screening Test Regulations 2002" and Regulation 2(f) of the "Eligibility Requirement For Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations 2002", mandates that the qualifying examination for seeking admission to the graduate medical course has to be in accordance with "Regulations on Graduate Medical Examination, 1997". Based thereon, it has been argued that the petitioner does not have the requisite qualification as prescribed by the regulations.

5. Learned Counsel for the petitioner has contended that the issue raised in this petition is clearly covered by a decision of the Supreme Court in Medical Council of India Vs. Indian Doctors from Russia Welfare Associations and Others, . The said case dealt with the problem of students who have undergone courses in medicine in medical colleges in the erstwhile USSR. The MCI had registered these students who had obtained degrees from the said colleges/universities. Without registration the said graduates who have degree in Medicine from abroad cannot practice as a medical practitioner in India. The MCI had filed a SLP against the orders passed by the Allahabad High Court and Delhi High Court. The Supreme Court while hearing the matter made certain observations in the interest of all concerned that Government of India should formulate an appropriate policy considering the history of the problem and need to maintain standards and also bearing in mind the human problem of students who had undergone training/ studies and had spent years to obtain degrees. The Supreme Court also noticed that Section 13 of the Indian Medical Council Act, 1956 had been amended to deal with the situation that had arisen w.e.f. 18th February, 2002, new regulations had been sent for being published in the Gazette. The new regulations dealt with a situation where a student has proceeded outside India for study of Medicine and has successfully completed and obtained degree in Medicine which entitled him to be enrolled and practice as a medical practitioner. It prescribes requirement to qualify and pass a screening test for the purpose of registration and that a person will not be entitled to appear in the screening test

if : (i) Medical College situated abroad is not recognized by the country in which an institution awarding the said qualification is situated and (ii) Indian Citizen who is desirous of taking admission in an undergraduate medical course abroad on or after 15th March, 2002, should have obtained eligibility certificate from MCI for admission to MBBS Course in India. The Supreme Court, however, was conscious of the problem relating to students who have obtained degrees or had taken admission before the publication of the Notification or prior to 15th March, 2002. The Government was also aware of the said problem and in these circumstances placed guidelines before the Supreme Court, which have been reproduced in para 6 of the judgment and the Supreme Court exercising its power under Article 142 of the Constitution of India held that these guidelines will be applicable to all such students who are similarly situated whether they are parties before the Supreme Court or not. The guidelines 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 recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised 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 recognised 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. In the instant petition, the petitioner had taken admission in the Ukraine University in the year 1997 and had successfully obtained Diploma in 2003. The said University is recognized by the MCI. He will, therefore, be covered by paragraph 6(B) of the aforesaid directions quoted above. On a bare reading of paragraph 6(B), it is clear that all students who had taken admission abroad prior to 15th March, 2002 are allowed to appear in the screening test, if they can be granted exemption in terms of paragraph 6(A)(ii). The clauses clearly provide that such students who do not meet "minimum admission norms" of MCI for joining undergraduate course in India, shall be permitted to appear in the screening test by relaxation of the requirement of "minimum admission norms". The reason for issuing this direction was that with effect from 15th March, 2002 onwards all students going abroad for medical studies have to first obtain eligibility certificate from MCI, but before the said date there was no such requirement. Students who had gone abroad before 15th March, 2002 were admitted in Medical Colleges abroad as per their eligibility criteria which were different from those prescribed in India.

7. Our attention was also drawn to a judgment of the Division Bench of this Court in Naveen Sharma (Dr.) v. Medical Council of India and Anr. RPA No. 1092 of 1092 of 2006 decided on 20th December, 2007 wherein the appellant had suffered from two disabilities, first that the appellant was 17 years of age, on the date when he took admission in the foreign University and the second objection was that the aggregate marks obtained by the appellant in Physics, Chemistry and Biology were less than the minimum prescribed marks i.e. 50%. The Division Bench held that the case is covered by the judgment of the Supreme Court in Medical Council of India v. Indian Doctors from Russia Welfare Associations and Ors. (supra):

10. We may state here that the stand of the respondent-Medical Council of India is somewhat inequitable and unjustified as the appellant was permitted and allowed to sit in the screening test conducted by the National Board of Examination, Ministry of Health and Family Welfare, Government of India in 2005 and has qualified the same.

11. The Supreme Court in the case of Indian Doctors from Russia Welfare

Associations (supra) has granted exemption to students who do not meet "minimum admission norms". Supreme Court has not stated in the said directions that students who do not meet one minimum eligibility norm prescribed by the Medical Council of India, will be granted exemption and students who do not meet more than one eligibility norm, will not be granted exemption. A perusal of the guidelines shows that as far as eligibility criteria is concerned, under Clause 6(A)(ii) the expression used is "minimum admission norms" in plural. Similarly, in Clause 6(B) the expression used is "minimum eligibility requirements" in plural. The Government of India while framing the guidelines was aware that a student may not meet a single eligibility requirement or multiple eligibility requirements and therefore had expressly used the terms "norms" and "requirements" in plural. Nothing prevented the Government to state in the guidelines that exemption from eligibility norms shall be granted only in cases where a student does not meet a single or one eligibility requirement and students who do not meet two or more eligibility requirements shall be barred and are not entitled to appear in the screening test. The intention of the Government and the guidelines is clear, when it uses the two expressions in plural sense. It is well settled that intention of the legislator and the meaning at the first instance has to be gathered from the words used. When words used are clear, un-ambiguous and bear only one meaning, the courts give effect to that meaning. Plain words explicitly used in the guidelines supports the stand of the appellants and goes against the interpretation put forward by the respondent Medical Council of India. 12. Learned Counsel for the Medical Council of India has also not been able to point out any specific order passed by the Supreme Court in which any direction or observation has been made holding that failure to meet two or more eligibility requirements will not entitle a student to benefit of Clause 6(B) read with Clause 6(A)(ii) of the guidelines.

8. Learned Counsel appearing on behalf of the respondents sought to rely upon an order passed by the Supreme Court dismissing a writ petition and certain other applications. It is argued that in that writ petition the point involved was the same and the relief claimed was also identical. We may mention that the order is non-speaking order and it merely says that writ petition is dismissed. No reasons or grounds for dismissal are recorded in the order. It is not possible for this Court to hold and read into this non-speaking order dismissing a writ petition under Article 32 words or directions that has the effect of modifying or clarifying its earlier directions in Medical Council of India viz. Indian Doctors from Russia Welfare Associations and Ors. (supra). We are bound by the decision and directions given in the aforesaid case by the Three Judge Bench. Therefore, in our opinion, the respondents are obliged to follow the judgment of the Supreme Court in Medical Council of India v. Indian Doctors from Russia Welfare Associations and Ors. (supra) as well as the judgment of the Division Bench of this Court in Naveen Sharma (Dr.) v. Medical Council of India and Anr. (supra). It is rather unfortunate that the respondents have denied the permission to the petitioner to appear in the examination in spite of the judgment of the Supreme

Court and the Division Bench of this Court and they had chosen to agitate the same issues which stand settled by the aforesaid judgment.

9. In the circumstances, the petition is allowed. The respondents are directed to permit the petitioner to appear in the Screening Test which is going to be held in September, 2009 and the subsequent tests, if necessary. Respondents shall pay the costs of the petitioner quantified as Rs. 10,000/-. The writ petition and the present appeal are accordingly disposed of. The pending applications also stand disposed of.