

(2012) 10 DEL CK 0350
In the Delhi High Court
Case No : LPA No. 443 of 2010

Shailesh Kumar Jha

APPELLANT

Vs

Medical Council of India

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Indian Medical Council Act, 1956 — Section 25(1)

Citation : (2013) 6 AD 341 : (2013) 198 DLT 449 : (2013) 133 DRJ 222

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Sindhu Sinha, for the Appellant; Ashish Kumar, for the Respondent

Final Decision : Disposed Off

Judgement

D. Murugesan, chief justice

1. This intra-court appeal impugns the order dated 13.04.2010 of the learned Single Judge dismissing W.P.(C) No. 2042/2001 preferred by the appellant. The writ petition was filed impugning the letter dated 20.03.2001 of the respondent Medical Council of India (MCI) rejecting the application dated 25.07.2000 of the appellant for issuance of Provisional Registration Certificate u/s 25(1) of the Indian Medical Council Act, 1956 (IMCA) for the reason that the appellant was "initially admitted in unrecognized institution" and was thus "not eligible for Provisional Registration Certificate u/s 25(1) of the IMCA". It was the case of the appellant in the writ petition:

(i) that he had completed his Higher Secondary in the year 1993;

(ii) that he was desirous of pursuing medical career and had applied for and was granted admission in the Peoples' Friendship University of Russia in the year 1994;

(iii) that the said University and the qualifications granted by it are duly recognized under the IMCA;

(iv) that he completed the course in the year 2000 and was issued with the requisite qualification certificate of M.D.;

(v) that during the year 1999-2000, he also completed internship for which he was issued Certificate by the said University;

(vi) that on 25.07.2000, he had applied for registration under the IMCA;

(vii) that the MCI vide its letter dated 16.11.2000 had required him to intimate the period spent in unrecognized institutions;

(viii) that the MCI had sought the said information harbouring under an erroneous impression that the Tula Department of the Peoples' Friendship University of Russia is a different institution when it is not so; and

(ix) that inspite of the petitioner having furnished the said clarification and documents in support thereof, the MCI had vide its letter dated 20.03.2001 rejected the application of the appellant for provisional registration as aforesaid.

2. The respondent MCI filed a counter affidavit dated 15.07.2001 in the writ petition stating:

(a) that a number of foreign medical institutions in the erstwhile States of Union of Soviet Socialist Republics (USSR) were recognized by the MCI but after the disintegration of USSR, it has been observed and found by the MCI that there was a sharp decline in the maintenance of standards of medical education in these Medical Institutions;

(b) that it was observed that these institutions were granting admissions to those Indian students who either did not even pass the 10+2 examination or failed to obtain even 50% marks in Physics, Chemistry, Biology and English and/or did not even have a Science subject in their 10+2 examination;

(c) that it was also found that the students were getting admissions in unrecognized institutions and thereafter were getting shifted to recognized medical institutions;

(d) that it was also found that the students were coming back with medical degrees after undergoing five or five and a half years only in the medicine course instead of the full six years;

(e) that the MCI therefore took a decision that those candidates who did not fulfill the eligibility criteria at the time of admission or initially took admissions in the unrecognized medical institutions or did not complete total duration of six years of medical course shall not be granted registration;

(f) that a large number of candidates who were so declined registration by the MCI, have approached various High Courts and different High Courts have issued directions for registration of such candidates;

(g) that the MCI approached the Supreme Court which during the pendency of

the matter had stayed such directions and subsequently granted some relief to some categories of students;

(h) that the matters are still pending before the Supreme Court and the MCI will deal with the case of the appellant also in accordance with the directions to be passed by the Supreme Court; and

(i) that the appellant was initially admitted in an unrecognized institution namely Peoples' Friendship University of Russia, Tula Department and had thus been denied registration.

3. The matter aforesaid pending before the Supreme Court of India being Civil Appeal No. 2779/2000 titled Medical Council of India Vs. Indian Doctors from Russia Welfare Associations and Others, . The said judgment of the Supreme Court noticed/held:

I. that the IMCA had been amended with effect from 03.09.2001 to cover the situation as arisen in the cases before the Supreme Court;

II. that the Regulations for conduct of the Screening Test and for issue of Eligibility Certificate by the MCI to the students proceeding abroad for studies in Medicine being, the Screening Test Regulations, 2002 and the Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 had been formulated and approved;

III. that as far as persons who had applied to the MCI for grant of provisional registration after completion of their degree abroad prior to 15.03.2001 and had not been granted provisional registration by the MCI were concerned, they fell into the following categories:

(a) Those who did not undergo the complete duration of six years of the medicine course from institutes recognized by MCI;

(b) Those who did not fulfill the minimum eligibility criteria for joining medical course laid down by MCI at the time of their admission in the medical institutions abroad, particularly in the erstwhile States of USSR; and

(c) Those who came back with medical degree which are not recognized by the MCI.

In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15.03.2001, the following Guidelines had been placed before the Supreme 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 unrecognized institutions, or the total length of study in a recognized

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 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.

IV. that all students who had taken admission abroad prior to 15.03.2002 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 to their case.

V. The categories of students not covered by A(i) & (ii) above and whose entire period of study has been in medical college not recognized by MCI, will be allowed to appear in the Screening Test for the purpose of their registration provided they fulfill all the conditions laid down in the Amendment to the IMCA with effect from 03.09.2001.

4. The Supreme Court approved the aforesaid Guidelines of the Central Government and made them applicable to all such persons who are similarly situated whether they were parties before the Court or not; the MCI was also directed to within 15 days of the said judgment either grant or refuse registration in terms of the order; it was further directed that on grant of registration, the students shall undergo internship or housemanship, if needed; it was clarified that the Guidelines approved were by way of one time measure and future cases will be governed by the Regulations aforesaid.

5. The respondent MCI, in compliance of the judgment aforesaid of the Supreme Court again took up the application dated 25.07.2000 of the appellant for registration but vide order dated 19.06.2002 informed the appellant that he did not fall in any of the categories under which the applications were to be disposed of in compliance of order aforesaid of the Supreme Court and thus could not be considered for provisional registration to undergo compulsory internship.

6. Though no reason was stated in the letter dated 19.06.2002 supra but MCI in October, 2002 filed an affidavit in the writ petition filed by the appellant stating that the appellant had passed his 10+2 examination from the Board of Adult Education and Training, Institute of Adult Education which was not a recognized Board and owing to the said deficiency, he was not covered by the directions of the Supreme Court.

7. The appellant then amended the writ petition to include the challenge therein

to the letter dated 19.06.2002 also of the respondent MCI.

8. The learned Single Judge in the impugned judgment dismissing the writ petition has noticed that the following three reasons had been given by the MCI for refusing registration to the appellant; (i) that it is only the Peoples' Friendship University of Russia in Moscow which is the recognized institution and not its campus at Tula; (ii) the appellant had not completed a six years course in medicine in Russia; and (iii) that the appellant did not qualify in the 12th class from a duly recognized education board.

Having noticed so, the learned Single Judge on perusal of the documents and the records held that the aggregate of the total time spent on the course in both Tula and Moscow by the appellant was six or more years. It was thus held that the first two reasons given by the respondent MCI for refusing registration to the appellant were not tenable. The learned Single Judge however held that the appellant was unable to overcome the three objections aforesaid. It was held that the order aforesaid of the Supreme Court cannot be understood as having permitted a one-time eligibility even where the institution from where the student had obtained the School Leaving Certificate was not a recognized one. Accordingly, the writ petition was dismissed.

9. We have heard the counsel for the appellant and the counsel for the MCI. The contention of the counsel for the MCI is that the Supreme Court, in the judgment aforesaid had only waived the three eligibility conditions i.e. of the student at the time of passing the 10+2 examination being 17 years of age, having studied the subjects of Physics, Chemistry, Biology and having secured aggregate of 50% marks and has not waived the requirement of having passed the 10+2 examination from a recognized Board.

10. We have bestowed our thoughtful consideration to the matter and find ourselves unable to agree with the reasoning given by the learned Single Judge. We may notice that the Eligibility Regulations supra require an Indian citizen desirous of joining an undergraduate medical course in any foreign medical institution to fulfill the age criteria and the eligibility criteria for admission to MBBS course in India as prescribed in the Regulations on Graduate Medical Education, 1997. The said Regulations in turn prescribes the following for admission to MBBS course:

(a) completing the age of 17 years on or before 31st December of the year of admission to the MBBS course;

(b) passing the qualifying examination i.e. the Higher Secondary Examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study or any of the other examinations as mentioned therein and which in scope and standard is found to be equivalent to Intermediate Science Examination of an Indian University/ Board, taking Physics, Chemistry and Biology including Practical test in each of these subjects and English.

11. It would thus be seen that passing the qualifying examination from the prescribed Boards is one of the conditions of eligibility for admission to the MBBS course under the Regulations aforesaid.

12. We may further notice that one of the three reasons aforesaid given by the MCI before the Supreme Court for refusing registration was non fulfillment of the minimum eligibility criteria laid down by the MCI for joining the medical course, at the time of admission in the medical institutions abroad.

13. We may yet further notice that the Central Government in its recommendations supra which were accepted by the Supreme Court "condoned the irregularity of the students not meeting the minimum admission norms of MCI for joining Under Graduate Medical Course". We highlight that while the MCI had given the reason of the students not "fulfilling the minimum eligibility criteria" but the Central Government in its recommendation accepted by the Supreme Court waived the minimum "admission norms of MCI for joining undergraduate medical course". The Central Government and the Supreme Court thus avoided the use of the expression "eligibility criteria" and rather used the words "minimum admission norms" and condoned non compliance of all such norms.

14. In our opinion in the face of the Central Government having used the expression "minimum admission norms", it is not possible to carve out a distinction between the eligibility norms of i) age; ii) having studied the subjects of Physics, Chemistry, Biology and English; and, iii) having obtained aggregate 50% marks, on the one hand and having done 10+2 from the specified Boards on the other hand. MCI as well as the learned Single Judge have held only the former category and not the latter to be covered in the "minimum admission norms". We fail to see any distinction. The Regulations on Graduate Medical Education also do not carve out any such distinction and both categories aforesaid are found under the heading of "Eligibility Criteria". Not only so, if the version of the MCI as accepted by the learned Single Judge were to be accepted, it would mean that a student who has not even studied the subjects of Physics, Chemistry and Biology and may have studied some other subjects but from the specified Board would be eligible for registration but a student who though has studied the subjects of Physics, Chemistry, Biology and English but from a non specified/recognized Board, would be ineligible. We are unable to see the logic.

15. We are therefore of the opinion that when the Central Government and the Supreme Court, for the students who had applied for registration prior to 15.03.2001 (as the appellant herein had) condoned the "minimum admission norms", the same would include the norm of having passed the qualifying examination from the specified Board and which is but a facet of the admission norms and cannot be placed at a pedestal higher than the other admission norms.

16. A Single Judge of this Court in Dr. Prashanta Padmanabha Amin Vs. R.N. Sheetal Wad, held that the directions aforesaid of the Supreme Court are explicit

and unambiguous and the Supreme Court had put its seal of imprimatur on the Guidelines formulated by the Government condoning all irregularities in meeting the minimum admission norms of MCI and the MCI had no option to refuse registration in respect of candidates who suffered from this disability. The contention of the MCI that the said relaxation was available only to candidates with one disability and not to candidates suffering from more than one disability was negated. It was yet further held that the minimum admission norms are not restricted to persons who did not pass the 10+2 examination or who did not have the minimum 50% marks; the contention of the MCI, as raised in this proceedings that the minimum admission norms would not cover passing the qualifying examination from an unrecognized board, was not accepted. It appears that the MCI has been raising such contention, as in this proceeding, in other matters also, on the basis of certain non speaking orders of the Supreme Court. A Division Bench of this Court in LPA No. 1092/2006 titled Navin Sharma Vs. Medical Council of India held that the recommendations aforesaid of the Central Government accepted by the Supreme Court apply to all students who had taken admission prior to 15.03.2001.

17. In Nusrat Jahan Bukhari Vs. Medical Council of India , the contention of the MCI was that since the petitioner therein had not studied in 11th and 12th classes, she was not covered by the recommendations aforesaid. However, a Single Judge of this Court rejected the said contention observing that this distinction was inconsequential and irrelevant and the recommendations of the Central Government accepted by the Supreme Court referred to minimum admission norms without any exclusion. LPA No. 344/2009 preferred there against was dismissed by a Division Bench of this Court on 28.07.2009 observing that the Guidelines/Directives issued by the Supreme Court are general in nature and would even cover the disabilities/objections raised by the MCI of having not at all qualified the 10+2 examination. It was further held that the Supreme Court had in the judgment aforesaid, not stated that students who do not meet one eligibility norm will be granted exemption and students who do not meet more than one eligibility norm will not be granted admission and that nothing prevented the Government, if it so desired, to state that exemption would be available only in the former cases and not in the latter cases; instead the Government had used the expression "admission norms" which is wide enough to cover all admission norms.

18. We thus find that the matter is no longer res integra and is covered by the judgments aforesaid of this Court itself and which were not cited before the learned Single Judge.

19. Mention may also be made of the judgment of a Single Judge of the High Court of Jammu & Kashmir in Syed Bilal Ahamd Razvi Vs. Union of India and Others . In that case also, the petitioner did not qualify the 10+2 examination but had only passed the 11th Class examination and the contention of the MCI was that he was not covered under the judgment aforesaid of the Supreme

Court. The said contention was again not accepted. We accordingly allow the appeal and hold the appellant to be entitled to condonation of admission norms. MCI is accordingly directed to, within two months hereafter and subject to the appellant completing the formalities, grant provisional registration to the appellant. However, since the appellant had completed his course in Medicine more than 12 years ago and without registration could not have practiced and must have rusted by now, we direct that the appellant, instead of undergoing one year's internship training would undergo two years internship training in a recognized hospital and on successful completion thereof shall be eligible for registration as a medical practitioner in India.

The appeal is disposed of. No costs.