

(2010) 12 DEL CK 0192

In the Delhi High Court

Case No : Writ Petition (C) No. 5055 of 2010

Shambhavi Sharma

APPELLANT

Vs

National Board of Examinations and Another

RESPONDENT

Date of Decision : 13-12-2010

Acts Referred:

Indian Medical Council Act, 1956 — Section 13(4A), 13(4B)

Citation : (2011) 1 AD 382

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Jayant K. Mehta, for the Appellant; Rakesh Gosain, for R-1, Amit Kumar and Ashish Kumar for R-2 MCI, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the communication dated 1st December, 2009 of the Respondent No. 2 Medical Council of India (MCI) refusing to issue Eligibility Certificate to the Petitioner and seeks direction to the Respondent No. 1 to declare the result of the screening test taken by the Petitioner.

2. The Petitioner studied till Class X in a School in India. The Petitioner thereafter was admitted to Spearfish High School, Spearfish, South Dakota, USA, an accredited school of the Western Association of Schools and Colleges, USA and passed 12 years High School Diploma therefrom with Physics, Chemistry, Biology & English in May, 2003. The Petitioner thereafter obtained admission in St. Petersburg State Medical Academy, Russia and claims to have obtained therefrom a degree in June, 2009 equivalent to that of MBBS.

3. The Eligibility Requirement for taking admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 require Indian Citizens desirous of joining an undergraduate medical course in any Foreign Medical Institution on or after 15th March, 2002, as the Petitioner had done, to approach

the MCI for issuance of an Eligibility Certificate for the said purpose.

4. The Screening Test Regulations, 2002 require Indian Citizens possessing primary medical qualification awarded by any Institution out of India and desirous of getting provisional or permanent registration with MCI on or after 15th March, 2002, to qualify a screening test for that purpose. Only those who had obtained Eligibility Certificate aforesaid are permitted to appear in the screening test.

5. It is the case of the Petitioner that the Petitioner applied for an Eligibility Certificate in the year 2003 but did not get any response and was under the bona fide impression that her application had been accepted. It is further the case of the Petitioner that she learnt in the year 2005 that the MCI had misplaced her application for Eligibility Certificate; the Petitioner claims to have made another application for Eligibility Certificate in the year 2005 and then again in the year 2007 but to no avail. The Petitioner upon return to India after having obtained the Bachelor's Medicine (M.D.) Degree from St. Petersburg State Medical Academy, applied to appear in the screening test. Provisional admission to screening test was granted to the Petitioner. However when her result of the screening test was not declared, on making enquiries she was told that her request for Eligibility Certificate filed in the year 2007 had been declined for the reason that she had passed her schooling within one year from Spearfish High School and not studied for two years after class Xth and thus could not be granted Eligibility Certificate. Since the Petitioner was denied Eligibility Certificate and was thus not eligible for taking the screening test, her result of the screening test was withheld.

6. The Petitioner represented again to the Respondent No. 2 MCI and rejecting which representation, the communication dated 1st December, 2009 impugned in this writ petition was issued. The reason given in the communication dated 1st December, 2009 for refusing the Eligibility Certificate was the same i.e. of having obtained the High School Diploma after only one year's study after class Xth.

7. Notice of this writ petition was issued and the Respondents directed to produce the result of the screening test taken by the Petitioner in a sealed cover before this Court.

8. On the next date though the result of the screening test in a sealed cover was handed over but the counsel for the Respondents informed that the Petitioner had cleared the screening test.

9. The counsels were heard at length on 18th October, 2010. Since the Regulations on Graduate Medical Education, 1997 provide that no candidate shall be allowed to be admitted to the MBBS course until he/she has inter alia passed 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 with the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not

less than the core course of English, OR any other examination which in scope and standard is equivalent to the intermediate science examination of an Indian University/Board taking Physics, Chemistry and Biology including practical test in each of these subjects and English, it was enquired from the counsels as to who determines whether "any other examination which is in equivalent to intermediate science examination of an Indian University / Board". All counsels informed that the same is to be determined by the Association of Indian Universities (AIU).

10. This Court was thus of the view that if the High School Diploma taken by the Petitioner from the Spearfish High School is equivalent to the 10+2 Higher Secondary Certificate Examination, the Petitioner shall satisfy the eligibility under the Eligibility Certificate Regulations.

11. Though the Petitioner had produced before this Court a Certificate dated 30th October, 2009 issued by the AIU certifying that the 12 years High School Diploma done by the Petitioner from the Spearfish High School is equivalent to the 12 years Senior School Certificate of CBSE, it was enquired from the counsel for MCI as to why in the face of the said certificate of AIU, the Petitioner was held to be not eligible. The counsel for the Petitioner in this regard had also relied upon *Jishalakshi Embrandiri v. Medical Council of India* 2006 AD (Delhi) 51, in paras 12 and 13 whereof it has been held that the number of years of education is not relevant after the examination is otherwise found equivalent.

12. The matter was as such adjourned for the counsel for MCI to take instructions.

13. On the next date, the counsel for the Respondent No. 2 MCI contended that the Petitioner was to apply for Eligibility Certificate prior to commencing medical education in the Foreign Medical Institution and having not done so, is not entitled to apply for the Eligibility Certificate after having completed the course from the Foreign Medical Institution. However this Court observed that under the Regulations, it did not make any difference as to whether the Eligibility Certificate is applied for and obtained before commencing education or even thereafter. It was also observed that the application of the Petitioner for Eligibility Certificate made after completing the course from Foreign Medical Institution was entertained and was rejected on merits and not on the ground of having been made subsequently.

14. The counsel for Respondent No. 2 MCI on that date stated that MCI had in December, 2009 written to the Spearfish High School to satisfy itself as to the genuineness of the claim of the Petitioner. It was further stated that in the documents earlier produced by the Petitioner, the Petitioner was not found to have studied the subject of Physics and had produced a corrected mark sheet only upon it being so pointed out. It was thus pointed out that a doubt had been cast with respect to the said Certificate. In the circumstances yet another opportunity was given to the Respondent No. 2 MCI for making enquiries from

the Spearfish High School and the matter was adjourned to today.

15. The counsel for the Respondent No. 2 MCI has today stated that an e-mail was sent to the Spearfish High School at the address furnished by the Petitioner; that a response in favour of the Petitioner followed by a hardcopy favourable to the Petitioner had been received but the said response was without any signatures or stamp. The counsel for the Respondent No. 2 MCI has handed over a bunch of documents relating to the enquiries made in this regard. From the said documents I am satisfied that the Spearfish High School has responded faulty. Thus, in view of the Certificate of AIU, it is held that the High School Diploma obtained by Petitioner is equivalent to the Intermediate Science Examination of an Indian Board. The Petitioner was thus eligible for admission to MBBS and consequently also eligible for admission to the Foreign Medical Course/ Institution.

16. However the counsel for the Respondent No. 2 MCI has today again urged that the Petitioner was required to apply for Eligibility Certificate before joining the St. Petersburg State Medical Academy and did not do so and hence is not entitled to succeed in this writ petition. With reference to Section 13(4B) of the Indian Medical Council Act, 1956 and the Eligibility Certificate Regulations, it is argued that the requirement is of applying before joining the course.

17. Though this aspect was considered and decided against the Respondents in the order dated 25th October, 2010 but since the writ petition was not disposed of on that date for complete adjudication, the said argument is again considered today.

18. Undoubtedly, literal reading of the Act and the Regulations shows that the application for Eligibility Certificate has to be made prior to joining the Foreign Medical Institution. The Division Bench of this Court also in Yash Ahuja and Others Vs. Union of India (UOI) and Others suggests that the application has to be prior to admission in Foreign Medical Institution. Though the Petitioner has pleaded to have applied prior to joining the St. Petersburg State Medical Academy but there is no document in that regard. The counsel for the Petitioner states that no copy of the application was maintained and there is no practice of giving a acknowledgement. The Petitioner also relies on the replies received from the Respondent No. 2 MCI to the RTI query to the effect that there is no system in the MCI of maintaining records of the applications received or rejected.

19. The Foreign Medical Institutions are not governed by the Act and the Regulations aforesaid. Thus even though the Act and the Regulations suggest obtaining Eligibility Certificate prior to joining the Foreign Medical Institution but since the production of the said Certificate is not necessary for admission in a Foreign Medical Institution governed by their own Rules, admission is granted even without the Eligibility Certificate.

20. The only relevance of the Eligibility Certificate thus is for the purpose of appearing in the screening test. The question of appearing in the screening test

would arise only when the course from the Foreign Medical Institution is completed. Seen in this light, I do not see any reason for insisting upon applying for the Eligibility Certificate prior to joining the Foreign Medical Institution. The enquiry which is to be done and the satisfaction which is to be reached qua the eligibility can be reached even after gaining such admission and till just before appearing in the screening test. If an Indian Citizen, chooses to pursue Medical Education in a Foreign Medical Institution without the Eligibility Certificate, he would do so at the risk of notwithstanding having completed the education, being denied the Eligibility Certificate and consequently registration with MCI and right to practice Medicine in India.

21. Thus the language of the Act and the Regulations appearing to suggest that the application for Eligibility Certificate has to be made before getting admission in a Foreign Medical Institution, has to be interpreted in the context and purposely and not in a pedantic fashion. The Supreme Court in *Yash Ahuja and Others Vs. Medical Council of India and Others*, an appeal from the judgment aforesaid of the Division Bench traced the history of the medical education in India and the factors resulting in introduction of Section 13(4A) and (4B) to the Act and for formulation of the Regulations and in interpretation of Section 13(4A) held that even if the material words are capable of bearing two constructions, the most firmly established rule for construction of such works in the rule of purposive construction or mischief rule i.e (1) what was the law before the making of the Act, (2) what was the mischief or defect for which the law did not provide, (3) what is remedy that the Act has provided and (4) what is the reason of the remedy. Adopting the said rule, it has to be held that it is immaterial whether the Eligibility Certificate is applied for and issued before admission into Foreign Medical Institution or thereafter. Reference in this regard may also be made to:

- (a) *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, .
- (b) *National Insurance Co. Ltd. Vs. Laxmi Narain Dhut*, .
- (c) *Surjit Singh v. MTNL* (2009) 16 SCC 722.
- (d) *Swarn Darshan Impex (P) Ltd. Vs. Commissioner, Value Added Tax and Another*, .

Laying down that the words of a statute are to be understood in the sense they best harmonize with the subject of the enactment and the object which the legislature has in view-where there is a conflict between the purpose and the material, the purpose is to prevail for the material is subordinate to purpose. It was further held that where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the object, purpose and scope of the statute.

22. I am therefore not inclined to accept the plea of the Respondent No. 2 MCI at this belated stage that the Petitioner is not entitled to the Eligibility Certificate for the reason of having applied for the same after joining the St. Petersburg State Medical Academy.

23. The counsel for the Respondent No. 1 has also drawn attention to another recent judgment dated 20th December, 2007 in titled Dr. Naveen Sharma v. Medical Council of India LPA No. 1092/2006 but the same is not found opposite.

24. Else, I am satisfied that the Petitioner fulfilled the criteria for issuance of the Eligibility Certificate and the reasons given by MCI for denying the same to the Petitioner being erroneous.

25. The writ petition is therefore allowed. The Petitioner is found entitled to the issuance of the Eligibility Certificate. The communication dated 1st December, 2009 of the Respondent No. 2 MCI declining the Eligibility Certificate to the Petitioner is set aside and quashed. The Respondent No. 2 MCI is directed to issue Eligibility Certificate to the Petitioner within four weeks. The Petitioner having already passed the screening test, the Respondent No. 2 MCI is also directed to register the Petitioner as a Medical Practitioner.

The writ petition is disposed of. No order as to costs.