
(2013) 09 DEL CK 0127
In the Delhi High Court
Case No : Writ Petition (C) 6126 of 2012

Sushil Kumar

APPELLANT

Vs

Medical Council of India and Another

RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Indian Medical Council Act, 1956 — Section 13, 13(4A), 13(4B), 33

Citation : (2013) 09 DEL CK 0127

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

Bench : Single Bench

Advocate : Abdhesh Chaudhary, Mr. Nilendu Vatsyayan and Mr. Akshat Gupta, for the Appellant; Ashish Kumar and Mr. Rituraj Kumar for R-1 and Dr. Rakesh Gosain, for R-2, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—Section 13(4A) of the Indian Medical Council Act, 1956 (hereinafter referred to as the "said Act"), which came to be inserted w.e.f. 3.9.2001 to the extent it is relevant provides that an Indian citizen who obtains medical qualification from an institute in any other country recognised for enrolment as medical practitioner in that country shall not be entitled to be enrolled with any State Medical Council unless he qualifies the screening test prescribed in India for this purpose and the foreign medical qualification shall be deemed to be recognised medical qualification for the purposes of the said Act only after he qualifies the said screening test. Sub-section (4B) of Section 13 of the said Act, to the extent it is relevant, provides that an Indian citizen shall not be eligible to take admission to obtain medical qualification from any medical institution in any foreign country, without obtaining an eligibility certificate from the Medical Council of India (for short "MCI"). It further provides that in case the qualification is obtained without such eligibility certificate he shall not be eligible to appear in the screening test referred to in sub-section (4A) of Section 13 of the said Act. Regulation 8 of the Eligibility Certificate Regulations, 2002

(hereinafter referred to as the "said Regulations") framed by the MCI in exercise of the powers conferred upon it by Section 33 of the said Act, reads as under:

8. The Council shall consider the application for eligibility Certificate and verify the following details as per the Regulations of the Council -

i. Whether the candidate fulfils the age criterion prescribed by the Council?

ii. Whether the candidate fulfils the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997, i.e., minimum qualifying marks criteria in Physics, Chemistry, Biology and English, including relaxed criteria in case the candidate belongs to a reserved category?

ii. If the candidate belongs to SC/ST/OBC, whether he/she has produced a caste certificate from a Competent Authority?

Regulation 4 of the said Regulations reads as under:

4. The request for issue of Eligibility Certificate shall be made by the candidate in the proforma prescribed by the Council and shall be accompanied by the original certificate/mark-sheet (along with Photostat copy) of the qualifying examination. The original certificate shall be returned to the candidate after verifying the same with the photostat copy which shall be retained by the Council. Request shall also be accompanied by a Demand Draft for the specified sum in favour of Secretary, Medical Council of India, New Delhi. The fee shall be fixed by the Council.

2. The petitioner in WP(C) No. 6126/2012 took admission in Jiang Xi University of China some time in July-August, 2005. He, however, did not obtain the eligibility certificate from the MCI in terms of the requirement of Regulation 8 of the said Regulations before the aforesaid admission was taken.

The petitioner in WP(C) No. 6133/2012 took admission in Institute of Medical Science, Anhui University of China some time in April, 2006, and even he did not obtain the eligibility certificate from the MCI.

3. On completion of their course in the above Universities/Institutes of China the petitioners applied to the MCI for grant of the eligibility certificate in terms of the said Regulations.

Vide communication dated 29.8.2012, the petitioner in WP (C) No. 6126/2012 was informed as under:

It is to inform you that Council Office has received a communication from Embassy of India, Beijing, enclosing therewith a list of 30 (thirty) Medical Education Institutions approved to enrol foreign students by the Ministry of Education, China. It is further mentioned in the said communication that no eligibility certificate should be issued by the concerned authorities in India for studying in the institution other than in the said list.

A similar communication was sent to the petitioner in WP (C) No. 6133/2012 in

respect of Anhui University of China.

4. Being aggrieved from refusal of the Eligibility Certificates to them, the petitioners are before this Court seeking the following reliefs:

i. Issue a writ, order or direction or writ in the nature of mandamus quashing the letter dated 29/08/2012 issued by the MCI and direct them to accept the Application for issuance of eligibility certificate of the petitioner;

ii. Issue a writ, order or direction or writ in the nature of mandamus directing/ commanding the respondent No. 1 to issue eligibility certificate to the petitioner in accordance with the Eligibility Certificate Regulations, 2002;

iii. Pass such other order(s) or further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case, for which act of kindness the petitioner as in duty bound shall ever pray.

5. Vide interim order dated 21.3.2013, the petitioners were permitted to sit in the screening test conduct for the purpose of registration of candidates who obtained their medical qualification from a foreign country. The result of the petitioners has been kept in a sealed cover and is yet to be declared.

6. The writ petitions have been contested by respondent No. 1-MCI primarily on the grounds that (i) in view of the provisions contained in Section 13(4B) of the said Act and the Regulations framed by the MCI in exercise of the powers conferred upon it by Section 33 of the said Act, the petitioners were required to obtain the Eligibility Certificate before taking admission in the foreign university/ institute concerned; and (ii) the names of the institute/university from which the petitioners obtained their medical qualification does not appear in the list of thirty (30) Universities which have been recognised by the Government of China for the purpose or registration of medical practitioners in that country sent to them by the Indian Embassy in China,. The said list was stated to have been obtained by the Indian Embassy from the Ministry of Education, China.

7. As regards the first objection taken by the respondent-MCI is concerned, a reference may be made to a decision of this Court in WP (C) No. 11082/2009 & connected matters titled Pawan Kumar Gupta & Ors. Vs. Medical Council of India & Ors. decided on 10.2.2012, where, dealing with a similar contention this Court inter alia held as under:

12. The contention of the learned counsel for the respondent No. 1/MCI that the petitioners were obliged to have applied to the MCI for issuance of eligibility certificates before joining the Jinggangshan University and having failed to do so, they cannot approach this Court for such directions, has been considered and dealt with in a decision of a coordinate Bench of this Court dated 13.12.2010 in W.P.(C) No. 5055/2010 entitled "Shambhavi Sharma Vs. National Board of Examinations & Anr.

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19...In any case, even if it is assumed that none of the petitioners in W.P.(C) No. 6211/2011, except for petitioners No. 4 and 5, had applied to respondent No. 1/ MCI for grant of eligibility certificates, the said certificate gains significance only when a candidate proposes to appear in the Screening Test after completion of the MBBS course from a foreign medical institution. In such circumstances, the petitioners herein would be well within their right to apply to respondent No. 1/ MCI for grant of eligibility certificates upon completion of their medical course in April, 2012 or for that matter, at any point in time prior to their appearing in the Screening Test.

8. Admittedly no appeal against the above referred decision has been filed by the MCI. In the face of the aforesaid decision, it is not open to the MCI to insist upon the very same contention, which was expressly rejected by this court in the above-referred case. Even otherwise, the purpose of Regulation 8 of the said Regulations is to ensure that the person taking admission in a foreign University/ Institute is duly qualified for taking admission in MBBS course in India so that the persons who come from non-science fields, i.e., those who have not studied Physics, Chemistry and Biology are not able to obtain medical qualification from other countries who do not insist upon such a requirement and then practice in India. If a candidate who otherwise fulfils the eligibility criteria prescribed for admission to MBBS Course in India, under Graduate Medical Regulations, 1997 commits a mistake and does not seek the eligibility certificate from MCI before taking admission in a foreign university, it would be too harsh to penalise him for such an inadvertent error on his part which, since refusal of the certificate would result in spoiling the whole career of such a student who has studied in a foreign University at considerable cost and expenses.

9. The learned counsel for the respondent-MCI points out that under Regulation 9 of the said Regulations the MCI is required to issue Eligibility Certificate to a candidate certifying that he/she was eligible to join a medical institution outside India to obtain a primary medical qualification and the expression primary medical qualification has been defined in Regulation 2(d) of the said Regulations to mean a medical qualification awarded by any medical institution outside India which is a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India.

The applications of the petitioners for grant of an Eligibility Certificate have been rejected on the sole ground that the names of the Institutes/Universities from which they obtained their medical qualifications, do not appear in the list of thirty (30) Universities downloaded by the Indian Embassy from the website of the concerned Ministry in China, which have been approved to enrol foreign students in China. In terms of Regulation 8 of the said Regulations the MCI is required to verify only as to whether the petitioners fulfilled the eligibility criteria prescribed by it for admission to MBBS Course in India. On the other hand, in terms of the requirement of Regulation 9 read with Regulation 2(d) of the aforesaid

Regulation, the MCI is also required to verify, before it issues Eligibility Certificate to a person, as to whether the course in which admission is taken outside India, would qualify as a primary medical qualification within the meaning of Regulation 2(d) meaning thereby that he would be able to obtain such qualification which is recognised for enrolment as medical practitioners in the country in which the institution awarding the qualification is situated and that qualification is equivalent to MBBS course in India. Unfortunately, before rejecting the applications of the petitioners no attempt was made by the MCI to verify independently as to whether the qualifications obtained by the petitioners before this Court were such which were recognised as qualification for enrolment as medical practitioners in China and whether that qualification is equivalent to MBBS Course in India or not. Such an exercise would necessarily have to be undertaken by MCI. Such verification could also have been made by the MCI through the Indian Embassy in China but even that attempt was not made and the applications were rejected summarily on the ground that the names of the Institutes/Universities from which qualification was obtained by the petitioners did not find mention in the list of thirty (30) Institutes downloaded from the website of the concerned Ministry in China.

10. For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:

The applications submitted by the petitioners to MCI for issue of Eligibility Certificate shall be considered afresh in the light of the provisions contained in the Eligibility Certificate Regulations, 2002 and if it is found that the petitioners were eligible in terms of Regulation 8 & Regulation 9 read with Regulation 2(d) of the Regulations for Grant of Eligibility Certificate, such certificate shall be issued to them within three (3) months from today. It is made clear that the applications for grant of Eligibility Certificates shall not be rejected on the ground that the petitioners did not seek such certificate before taking admission in foreign Institute/University.

At this stage, the learned counsel for the petitioners has pointed out that initially the petitioners had taken admission in the Institute/University different from the University/Institute from which the medical qualification was ultimately obtained by them. If that be so, the MCI before issuing the Eligibility Certificate shall verify and confirm that both such Universities/Institutions were eligible in terms of the Eligibility Certificate Regulations, 2002.

In case the Eligibility Certificates in terms of this direction are issued to the petitioners, the result in the screening test shall also be declared and notified to them within two (2) weeks of issue of such certificates.

The writ petitions stand disposed of.