

(1998) 09 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition No. 3599 of 1997

Tarun Goel and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 18-09-1998

Acts Referred:

Citation : (1998) 6 AD 208 : (1998) 47 DRJ 761

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Ms. Geeta Mittal, Ms. Arti Bansal and Ms. Shobana, for the Appellant; Mr. Arun Jaitley, Sr.Adv. and Mr. Naveen Prakash, for the Respondent

Judgement

Manmohan Sarin, J.—Rule.

2. The petitioners are citizens of India, who had got admission to the M.D. Degree General Physician's Course in General Medicine in the Medical Institutions in the erstwhile USSR.

The petitioners by this writ petition are assailing the decision dated 17.10.96 & 23.10.96 of the Executive Committee of respondent No. 2, Medical Council of India (hereinafter referred to as "MCI"), whereby only those students who had been admitted up to 1.1.1991, were permitted to do their internship in India. Further, the decision of MCI to permit provisional Registration for internship in India, only after completion of the full medical degree course of 6 years and permanent registration only after completion of a further training/internship in India after obtaining the degree is challenged. Direction is sought for a declaration that the earlier decision dated 26.7.1994, which permitted students to do the internship in India in the 6th year of their course for 9 months, upon provisional registration in India, and thereafter to complete the balance period of three months, after qualifying the degree course abroad is valid and in force.

3. For for a proper appreciation of the matter in controversy and the respective contentions of the parties, it would be necessary to briefly notice the facts as

well as the decisions taken by the Medical Council of India from time to time.

4. For the sake of convenience, since the issues arising for decision are common, facts concerning the petitioner No.1 are being noticed. Petitioner No.1 claims to be fully eligible for admission to the Undergraduate Medical Course in USSR, called the M.D. Physician's (General Medicine) Course. He had in fact sought sponsorship through the Medical Council of India. Respondent No.2 could not sponsor the case as the total seats made available to respondent No.2 for allocation were only 10 against the contracted number of 50. In the circumstances, petitioner No.1 though fully eligible, perforce had to seek sponsorship through a private agency. In the event, petitioner No.1 and other petitioners were admitted to the Daghestan State Medical Institute and the Minsk State Medical Institute respectively for the M.D. Physician's Course, which was equivalent to MBBS degree in India.

5. Petitioner's father had sought clarification from respondent No.2, regarding recognition and grant of permission to undergo practical training/internship in India, as per the Bulletin of information published. Respondent No.2 vide its letter of 14th September, 1994 informed the petitioner that it had been decided on 26.7.1994, to permit the candidates sponsored by Medical Council of India as well as those sponsored by private agencies, to undergo practical/internship training in India, after completing 5th year of medical course in erstwhile USSR. This being further subject to submission of the provisional degree certificate and "No Objection" from the concerned institute. It may be noticed at this stage that students were required to complete a preparatory course of one year for familiarization with Russian language and thereafter pursue the M.D. Course for 6 years. After completion of 5th year, students were permitted 9 months practical training designated as "subordi natura" in recognized teaching hospitals in India. For the 9 months training, students were registered with the Medical Council of India provisionally. After this training students would complete the course in USSR and obtain the degree. Thereafter, they would again register in India and complete the remaining 3 months of practical training/internship training and seek permanent registration. This was, of course, subject to candidates fulfilling the eligibility criteria, for undergoing undergraduate medical course, as was applicable to Medical Council of India Sponsored candidates.

6. Following disintegration of the erstwhile USSR, it is claimed by the respondents that the educational institutions started acting in an autonomous fashion and there was a fall of standards. There was utter confusion and chaos in the USSR. The petitioners have brought on record the numerous changes made by the Medical Council of India in its decisions on permitting internship/practical training in India and the cut off dates therefore. These decisions are assailed as arbitrary, illegal and without any foundation and not being based on any rationale or material. The decisions taken by respondent No.2 in this regard are summarised below:

Respondent No.2 on 26.7.1994 decided to treat the MCI sponsored candidates

and the candidates sponsored by the private agencies at par for internship in India and for permanent registration after obtaining the degree from the recognised institutes abroad. It was decided that after the 5th year of the M.D. course provisional registration for internship in India would be given for nine months and the balance three months of practical training/internship would be completed after the candidate returns to India upon completing the course. The duration of the total course being 1+5+1, i.e. language course + medical degree + internship.

This decision was modified vide decisions of the Executive Council dated 18.7.1995 and 17.10.1996 to the effect that medical course in USSR would be for 1+6+1 years, i.e. language course + medical degree + internship. The internship training in India was to be allowed after obtaining the degree, i.e. 1+6 years. This decision was made effective from 1.1.1996. Thereafter, there was a volte face by respondent No.2 and the Executive Committee vide its decision dated 19.7.1996, decided to maintain status quo as prevailing as per the decision dated 26.7.1994. The General Body of the Medical Council made the decisions dated 18.7.1995 and 17.10.1996 applicable to those students who took admissions after 1.1.1995. The Executive Committee and the General Body of respondent No.2 again vide its decisions dated 17.9.1997 and 23.10.1996 changed the cut-off date and required that students admitted after 1.1.1991 or those obtaining degree after the sixth year on or before 1.1.1997, to undergo one year internship in India and only thereafter shall be eligible for permanent registration.

The aforesaid decisions are stated to be justified by the respondents as being pursuant to an inspection team sent in the month of June, 1995 and necessitated to ensure adherence to high quality and standards of education in the Medical field.

7. As a sequel to the decision of 23.10.1996, questions which arise for consideration are (i) Whether the decision of the Medical Council of India to permit internship/practical training in the 6th year only to students who were admitted on or before 1.1.1991 in the institutions in USSR and denying to those admitted thereafter is discriminatory, arbitrary and illegal; (ii) Whether the Medical Council of India is empowered u/s 13(3) and 25(1) of the Medical Council Act to prescribe and require that the internship/practical training in India would be permitted after completion of the 6 year course and the permanent registration would be granted only after completion of a further one year training /internship in India or Russia?

8. Learned counsel for the petitioners has urged before me that the degree courses conducted by the Institutes to which the petitioners were admitted are duly recognised and fall within part II of Schedule III to the Act. It was not open to the respondent No.2 to raise any objection with regard to the course or the eligibility criteria for admission or the practical training or contents of the course. It was within the exclusive domain of these institutions to prescribe the minimum

requirements and eligibility conditions.

9. In the bulletin of information (page 36 of paper book) issued by respondent No.2 for admissions to the Medical Institutions in USSR, it is stated that the duration of the M.D. course was 7 years including one year internship/practical training which could be done in medical hospital in India. The 7 year period includes first year preparatory course for familiarization with Russian language. As noticed earlier, after the completion of 5 years study, students were permitted to undergo practical training in clinical areas designated as "sub ordi natura" in India. In brief, the contention of the petitioners is that the period of internship or training was the 6th year of the course and there was nothing to warrant or justify the petitioners and other candidates being required to undergo additional period of one year's training after obtaining the recognised medical qualification. The Russian Medical Institutions had given their "No Objection" to candidates undergoing the training in recognised medical institutions in India. Once the candidate had undergone the period of training to the satisfaction of the Medical Institutions awarding the recognised medical degree, it was not open to the respondent No.2 to raise objection or prescribe or insist upon further training in India after obtaining the recognised medical qualifications. The petitioners submit that it is misreading of section 13 of the Indian Medical Council Act by the respondents. Once a candidate has undergone, the required practical training as prescribed by the institution awarding the recognised medical qualification, the respondent Nos.1 and 2 have no power to require or prescribe further practical training after obtaining of medical qualification which is duly recognized. It is only in the event, that a candidate has not undergone "any practical training" in the country awarding the qualification, that the respondent have any justification or authority to prescribe practical training. Apart from the above legal submission, the petitioners submit that by the impugned decisions regarding internship/training, the respondent No.2, had been discriminating between the students sponsored by it and the students sponsored by private agencies, even if the students of the latter were fully eligible and qualified to admission to recognised medical institutes abroad. Learned counsel for the petitioner also contended that the respondents were bound by the letter of 23.11.1994, confirming its decision of 26.7.1994, permitting candidates to undergo internship in India after completion of 5 years medical course, subject to the condition of producing provisional degree certificate and "No Objection" from the concerned Institute. The petitioners contend that the respondents are estopped from resiling from the said representation.

10. The respondents, on the other hand, as noticed earlier, seek to justify decisions taken as having been necessitated due to falling standards of education and with a view to ensure adherence to high quality and standard in education following disintegration of the erstwhile USSR. Learned counsel for respondent contended that even in the USSR, the degree course was 1+6 years after which the candidate had only a restricted right to practice the profession under supervision. It was only subsequently after further training that a candidate

could independently practice. Learned counsel further submitted that the change in cut-off date for applicability of the decision was not justiciable. It was open to the delegate to fix the cut off date. Reliance was also placed on the use of the word "after" in section 13 of the Indian Medical Council Act, in support of the contention that the practical training contemplated was only "after" the completion of the degree course. The date January 1991, was also sought to be justified as having nexus with the objective sought to be achieved in as much as after the said date the Medical Council of India had not sponsored any candidate, which would have ensured adherence to the eligibility criteria and merit of the candidates.

11. Upon consideration of the facts and rival submissions, the position which emerges is as under:

The petitioners claim to fulfill the eligibility conditions to be admitted to the M.D. course in USSR. The respondents have not pleaded that the petitioners were ineligible apart from general averments regarding private agencies sponsoring candidates without merit and the fall in standards etc. It is also not in dispute that the institutions, namely, the Daghestan State Medical Institute and the Minsk State Medical Institute, are still duly recognised institutions. The qualifications granted by them fall in Part II of 3rd schedule of the Indian Medical Council Act and are duly recognised. The petitioners' case could not be sponsored by the Medical Council of India since the allocated seats to it were only 10 as against 50 and the petitioners' case was sponsored through the private agency on this account and not because of any ineligibility. Respondent No.2-Medical Council of India also clarified to the petitioner's father vide its letter of 14.9.1994 that candidates sponsored by Medical Council of India as also those by a private agency could avail of the facility of undergoing internship in India after completing the 5th year subject to furnishing of documents and fulfilling eligibility criteria for undergoing undergraduate medical course. It is also not in dispute that the educational institutes of the petitioners gave their no objection etc.

12. However, the controversy regarding the non provision of facility to complete internship training in India after 5th year, i.e., in the 6th year has ceased to be of a consequence in view of the petitioner's claim of having completed and undergone training/internship in USSR itself in the 6th year of the course. Accordingly, it is not necessary in these petitions to decide the question regarding the denial of training facility in India and the respondent's contention that the petitioners, cannot as a matter of right claim to have internship/training in India. The question which concerns us is the requirement specified by respondent No.2 for undergoing one year's further internship in India after attaining the degree qualification abroad in erstwhile USSR as a pre-condition for grant of provisional/permanent enrolment/registration in India.

13. From the material on record, namely, the communications of the respondents themselves, it appears that it is clear that the M.D. course comprises one year

preparatory course in Russian language for familiarization plus 6 years course. Petitioners' contention that the 6th year course includes the practical training/ internship appears to be well founded. It was for this reason that the facility for having rotational training in India was granted in the 6th year itself and a student was expected after the nine month training to go back and take the examination. The remaining period of 3 months internship in India was completed after obtaining the degree. The submission of the respondent is that even after the grant of the degree in USSR, on completion of 6 year course, a candidate is not permitted independently to practice and can do so only under supervision. It is only after further training that he is allowed independently to practice. This appears to be the basis for justifying the requirement of further one year training specified in India as a condition precedent for granting permanent registration. The respondents have failed to produce any material on record to substantiate their aforesaid contention.

14. On the other hand, the petitioners have produced on record a communication dated 11.8.1997, at page 82 of the paperbook, from the Minsk State Medical Institute, giving the details of their faculty and the facilities available. In this communication, it is stated that General Medicine Course of Studies is six years, the sixth year being subordinator, i.e. internship training. In the said communication, the Minsk State Medical Institute has stated that it has no objection to its students receiving their practical training in India. In fact, they have stated that the same would enable the Indian students to prepare effectively and cope up with the work and conditions of health care in India. Further, in their communication dated 15.12.1997, to the General Secretary of the respondent No.2, it has been stated "that the duration of medical course in Minsk State Medical Institute is six years, including one year of internship (subordinator) after the completion of which the students are awarded their M.D. Physician Degree and are eligible to work as qualified medical practitioners....." The letter further goes on to mention the practice of permitting Indian students to do the subordinator in India in their sixth year. Further, that the programme of study is the same as in previous years. Reference may also be usefully made to the documents produced on behalf of petitioner No.1 in support of his having completed the course in General Medicine and being awarded the Degree of M.D. The Daghestan State Medical Academy has issued a Certificate dated 30.7.1998, which reads as under:

TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Tarun Goel s/o Dr. R.R. Goel, holder of Indian Passport No. B-003035, has completed full course of M.D. Physician (general medicine code 0401) and has been awarded diploma in doctor of medicine. He is entitled by this diploma to carry out professional activities of any kind connected with the above mentioned qualification and speciality."

Another certificate dated 10.7.1988 reads as under:

TO WHOMSOEVER IT MAY CONCERN

This is to certify that citizen of India, Mr.Tarun Goel, s/o Dr. R.R. Goel Passport No.-B003035 is a bonafide student of the DAGHESTAN STATE MEDICAL ACADEMY. He has successfully completed doctor of medicine course (General medicine Code 0401). After obtaining the qualification he has undergone practical training (Internship) as required by rules and regulations of this academy.

Yet another Certificate bearing reference No.319/3 dated 10.7.1998 gives the details of lectures and practical training undergone by the petitioner No.1 during the period of internship. The certificate lists the number of lecture hours as well as the practical training hours spent on diverse subjects, such as Social and Preventive medicine, internal diseases, surgical diseases, obstetrics and gynaecology, etc. It also includes village practice of three months. A supplementary certificate giving the various credits obtained by petitioner No.1 in nursing and medical practice have been filed. Petitioner No.1 has also produced the details and results of the Study Programme Tests, Intermediate and Final Examinations, giving the total number of hours as well as the credits obtained. It is seen that the total number of course hours spent are 10,894, which compare favourably with courses in the past.

15. In view of the above documents which have been produced on record, it would be seen that petitioner No.1 has successfully undergone the subordinator, i.e. the internship or practical training in the sixth year as per the requirement of the Foreign recognised Medical Institute. Learned counsel for the petitioners had submitted that the other petitioners have also completed similar courses of internship programme through their respective institutes and the same could be verified by respondent No.2 from the Certificates issued by the respective institutes, to be produced by petitioners.

Respondents rely on a letter dated 29.1.1981 with its enclosures. It is a letter written by the Joint Secretary, Ministry of Health and Family Planning to the President of the Medical Council of India. The enclosure to the letter mentions that the basic degree granted after finishing the six years course (excluding internship) is Doctor of Medicine. This is a letter written in 1981, i.e. prior to the grant of recognition to the various institutes in question. The subsequent material, including the Bulletin of Information as well as the other communications clearly show that after completion of 5th year of course, students were permitted to carry on the internship in India, in the sixth year, as discussed hereinbefore at length.

16. It is also not disputed that Doctor of Medicine Degree being awarded is equivalent to the MBBS degree awarded in India. From the calendar of the University of Delhi, it is seen that for the MBBS course the period of certified study is 4-1/2 years, excluding the period of practical training of one year. it would, Therefore, be seen that respondents have not been able to substantiate their contention that after successfully completing the M.D. course of 1+6 years

further training of one year is required to be undergone before the candidate is permitted to practice.

The respondents had sought to justify the requirement of one year training for the petitioners relying on the provisions of Section 33 and Section 13 of the Medical Council Act. Section 33 of the Medical Council Act enables the Medical Council, with the previous sanction of the Government, to make regulations to carry out the purpose of the Act and set out in clauses (a) to (n) of Section 33 of the Act. Clause "J" of the said Section 33 of the Act reads as under:

"the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications".

Section 13(3) of the Indian Medical Council Act is as under:

"The medical qualifications granted by medical institutions outside India which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country, he has undergone such practical training as may be prescribed."

17. It is not disputed that in the instant case that the requirement for doing one year practical training in India after completing the course in the foreign university duly recognised is not a regulation u/s 33 of the Act. Besides, there is no previous sanction obtained of the Central Government. The submission of the respondents was that even if the same is not a regulation and is in the nature of an administrative instruction, the same is binding. Reliance was also placed by the respondents on sub-section (3) of Section 13 of the Act. It was urged that the practical training stipulated under sub-section (3) is the training "after obtaining that qualification as may be required by the rules or regulations in force in that country." The submission being that the qualification or degree is granted after completing six years of course and, Therefore, the practical training referred to in sub-section (3) is not the training which is undergone before obtaining the qualification or degree. It was, Therefore, urged that the entitlement to enrolment would only be if the candidate undergoes training after the qualification in the foreign country. In case it was not so, respondent No.2 was well within its rights to prescribe the practical training, which must be undergone in India before the registration and enrolment on the medical register.

18. In the instant case, no rules or regulations in force in USSR regarding any practical training after the medical qualification, have been brought to my notice. The certificates produced by the petitioner No.1 from the Daghestan Medical

Academy, show that he has successfully undergone the internship and practical training as part of the course and is entitled to carry out professional duties. Training in India u/s 13(3) of the Act can be prescribed if the candidate has not undergone "any practical training" in the foreign country." The Legislature has carefully used the word "any", which is not qualified by the use of the word "before" or "after". In case the Legislature intended the word "any" in the last line of sub-section (3) of Section 13 to be read as "only after" obtaining the qualification, as in the preceding part of the sub-section, the Legislature would not have separated the two parts by use of "or" between the two and would not have used the word "any". The only manner in which the word "any" can be treated as intended to be "after obtaining the qualification" is by substituting and reading the word "such" in place of "any". The language of the enactment is clear and unambiguous, words cannot be added or substituted in the enactment. In the instant case, the courses of study prescribed by the institutions, conferring the recognised medical qualification, provide for practical training (internship) as part of the course in the sixth year of the course. Practical training in India can be prescribed when the candidate has not undergone "any" practical training in the foreign institute, which is not the situation in the present case. Reference may also be made usefully to the case of Arun H. Bakle Vs. Union of India and Others, In the cited case, Dr. Arun H. Bakale M.D. (Cardiologist) from Patrice Lumumba, was required by the Medical Council to undergo one year internship/practical training in an approved hospital in India for being granted permanent registration in India. Dr. Bakale's plea that he had already undergone practical training and he should be granted registration, without insisting upon further practical training was not accepted. The Medical Council of India, took the decision that irrespective of Dr. Bakale having foreign recognised qualification, he was required to undergo practical training in an approved hospital in India in order to familiarise him with the Indian conditions. The Division Bench of Bombay High Court, after considering the provisions of Section 13 and Section 15 of the Indian Medical Council Act, held that the petitioner had undergone practical training prescribed by the Rules and Regulations in force in USSR and, Therefore, he fulfilled the requirement of Section 13(3) of the Act, entitling him to enroll on the State Medical Register. The only thing required to be considered was to verify if he had undergone practical training and there being no dispute in this regard, he was entitled to be enrolled. It was further held that no subordinate legislation like the regulation envisaged u/s 33 of the Act could take away the right of enrolment on medical register u/s 15 of the Act. Special Leave to Appeal filed in the Supreme Court against the said order was dismissed.

19. Reference was also invited to a decision of a learned Single Judge of this court in Meenakshi Vs. Union of India and Another, . It was held that once the foreign institution was recognised, the eligibility criteria for admission has to be of the said foreign institution and not set by the Indian Government. This would be the position so long as the medical qualification granted by an institution outside India stood included in para II of IIIrd Schedule of the Act, as a

recognised medical qualification for the purposes of the Act. In the cited case, the candidate was sought to be denied registration because he did not meet the eligibility criteria for admission into the equivalent MBBS course in India. The Court directed registration of the candidate, who had been awarded the degree of Doctor in Medicine by the foreign institute.

20. In another case, Dr. Ardhendu Shekhar Pandey Vs. Union of India (UOI) and Another, , the student had completed some part of his education in an unrecognised institute, following the disintegration of USSR. The learned Judge, as a one time measure, directed the Medical Council of India to permit the candidate to complete his internship and to give some extra coaching or special course, if the Medical Council of India was of the opinion that the same was required.

21. To the petitioners in the writ petition, enrolment or registration is not sought to be denied on the ground that the petitioners were not eligible to the equivalent MBBS course or that they had not successfully completed their course through a recognised institute. The enrolment and registration is sought to be denied on the basis of the decision of 17th October, 1996, in terms of which all students admitted after January 1991 or qualifying after 1.1.1997 are required to complete their one year internship in India after completing the degree course.

22. As a result of the analysis and discussion in paras 10 to 16, it would be seen that petitioners have pursued a regular course of study in a foreign institution. The degree and qualification of the foreign institution is a recognised one, falling within Part II of Schedule III of the Indian Medical Council Act. The said course of study is said to include practical training or internship, as per the requirements of the rules and regulations in the foreign country. The Certificates produced by petitioner No.1 show that pursuant to the qualification and degree granted, petitioner No.1 has also undergone the required internship and practical training, details of which have been produced. The duration of the course to which the petitioners were admitted was 1+6, with internship and practical training in the sixth year. Petitioners were denied practical training in India and claimed to have undergone the same in the foreign institute itself. The foreign institutes have certified that the petitioner No.1 is entitled to carry out professional services in relation to the qualifications awarded. In view of the foregoing discussion in paras 10 to 16 above, it would be seen that as long as the qualification of the foreign institution is a recognised one, falling within part 2 of Schedule III to the Indian Medical Council Act and the said qualification included practical training or internship as per the rules and regulations of the foreign country, it does not lie in the province of the Medical Council of India to deny registration and enrolment and claim that further period of one year training must be gone through.

23. It also deserves notice that although the USSR disintegrated in the year 1991 and the Medical Council of India is stated to have made recommendation to de-recognize certain Institutes in 1994 to the Central Government, till date no decision has been taken thereon. Hence, these institutions continue to be

lawfully recognised. The eligibility criteria as well as qualifying criteria for their degrees would be that of the foreign institutions. Moreover, the inspection that was stated to have been carried out by the respondents was in the month of June, 1995. Notwithstanding the validity of the data and information, the Medical Council of India made its decision requiring internship of one year after the degree, applicable with effect from 1.1.1996. Subsequently, on 19.7.1996, it reversed the earlier decision and decided to maintain status quo in terms of the decision dated 26.7.1994, which permitted internship training in India in the 6th year. Thereafter, on 1.8.1996 it made its decision dated 17.10.1996 requiring internship for one year after the full course effective to those students who took admission after 1.1.1995 instead of 1.1.1996. It was on 23.10.1996, that it made the decision requiring one year internship after degree for permanent registration applicable to those qualifying after 1.1.1997, or those admitted after 1.1.1991. The fixation of a cut off date being in the discretion of the delegate, is not normally justiciable. However, the frequent changes in the date made in the absence of any subsequent material or data other than the inspection of June 1995, tends to show the same as being arbitrary and irrational. There is merit in the petitioner's contention that respondent No.2 has fixed cut off date only with a view to give benefit to the last batch sent by it and to deny the same to all others.

24. In view of the above discussion, the decision of respondent No.2 dated 17.10.1996 and 23.10.1996 in so far as it requires the petitioners to undergo one year further internship/training in India after successful completion of degree course as a condition precedent for enrolment in the State Register and for grant of permanent registration is held to be illegal and contrary to the provisions of the Medical Council Act and cannot be sustained and is accordingly quashed. The petition succeeds and respondent No.2 is directed to grant enrolment and registration to the petitioners subject to their furnishing and, thereafter, verification of the original degrees/ certificates of having successfully completed the degree course which included internship and practical training in the 6th year.

25. The writ petition stands allowed in the above terms. Rule is made absolute.