
(2015) 04 BOM CK 0087

In the Bombay High Court

Case No : Writ Petition Nos. 11482, 11484, 11485, 11488, 11489 and 11491 of 2014

Ujwal Narayanrao Chirde and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:

Citation : (2015) 4 ALLMR 806 : (2015) 5 BomCR 62 : (2015) 5 MhLj 217

Hon'ble Judges : Anoop V. Mohta, J;K.R. Shriram, J

Bench : Division Bench

Advocate : V.A. Thorat, Senior Advocate and Prabhanjan Gujar, for the Appellant; P.S. Gujar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

K.R. Shriram, J.—Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioners in these six petitions are all post graduate medical students of ESI-PGI MSR, MGM Hospital, Parel, Mumbai-400 012. (for convenience referred to as respondent no. 2, though the Dean of this Medical College is respondent no. 2). All the petitioners having successfully passed MBBS and the entrance examination for post graduation, following the selection process conducted by respondent no. 6 were given admissions in respondent no. 2 The respondent no. 5-Employee State Insurance Corporation, New Delhi, through Medical Commissioner established respondent no. 2 as well as ESI-PGI MSR, Andheri (East), Mumbai (for convenience referred as respondent no. 7 though the Dean of this medical college is respondent no. 7) for rendering medical services and for conducting medical courses. The respondent no. 5 has taken a decision to close down post graduate courses in Maharashtra being conducted in respondent no. 2 and respondent no. 7 and to conduct only in 3 colleges in India. The petitioners in all the petitions are affected by this decision of respondent no. 5 to close down post graduate courses in respondent no. 2. Therefore, it would be convenient to

dispose all the 6 petitions by this common judgment.

3 The petitioner in Writ Petition No. 11484 of 2014 i.e., Janhavi Pol is in the 2nd year of the post graduate course and is required to complete one more year for appearing at final year examination. The other 5 petitioners have completed their 3 years post graduate course and are due to appear in final examination in May-2015. The respondent no. 2 has, despite the decision of respondent no. 5 to close down, however, issued letter to the petitioner in Writ Petition No. 11484 of 2014 to complete her course of studies and to the other petitioners to appear for the examination scheduled in May-2015.

4 Though the petition as originally filed was for a writ of mandamus or certiorari or any similar writ or direction to transfer the petitioners to any other recognized institute due to the decision of respondent no. 5 to close down respondent no. 2 and to that extent direct the respondent no. 3 to complete the formalities relating thereto, during the course of hearing of the petition in the interregnum period between two dates of hearing, the contents and the reliefs sought in the petition underwent a change. The petitioners were happy to continue in prosecuting their post graduate course in respondent no. 2 and appear for examination but since respondent no. 5 had decided to shut down the respondent no. 2, the issue that arose was-"what will be the status of the students and degree obtained by them from the college which was permitted under Section 10-A of the Indian Medical Council Act, 1956 but later decides to shut down ?

5. To decide this issue we will have to consider the provisions of the Indian Medical Council Act, 1956. Section 10-A, 10-B (1) and (2) and 11(1) read as under :-

Section 10-A. Permission for establishment of new medical college, new course of study, etc.-(1) Notwithstanding anything contained in this Act or any other law for the time being in force-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or.....

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

10-B. Non-recognition of medical qualifications in certain cases-

(1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10-A, no medical qualification granted to any student of such medical college shall be a

recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10-A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3).....

11. "Recognition of medical qualifications granted by Universities or medical institutions in India"-(1) The medical qualifications granted by any University or medical institution in India which are included in the first Schedule shall be recognised medical qualifications for the purposes of this Act.

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6. Therefore, no person shall establish a medical college and no medical college shall open a new and higher course of study and training including post graduate course of study and training except with the permission of the Central Government in accordance with the provisions of Section 10-A. Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10-A or where any medical college opens a new or higher course of study of training including post graduate course of study or training except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college shall be a recognized medical qualification for the purposes of the said Act.

7. Admittedly and indisputably the respondent no. 2 was established as a medical college under Section 10-A and respondent no. 2 was conducting the post graduate course of study imparted to the petitioners with the previous permission of the Central Government in accordance with the provisions of section 10-A. Under Section 11, therefore, any medical qualification granted by respondent no. 2/4, if they are included in the 1st schedule to the said Act, shall be a recognized medical qualification.

8. It is not in dispute that the petitioners were admitted pursuant to the entrance examination for post graduation (PGN EET and AICTEE). It is also not in dispute that the petitioners underwent selection process conducted by respondent no. 6 including counselling. It is also not in dispute the petitioners were given admission in respondent no. 2 pursuant to an essentiality certificate issued by respondent no. 6. It is also not in dispute that the petitioner in Writ Petition No. 11484 of 2014, Janhavi Pol has completed her course upto 2nd year and has to only complete 1 more year and as regards the other petitioners, they have completed their 3 years post graduate course and have to only appear in their final examination in May-2015.

9. We are therefore of the view that since, at the time when the petitioners joined the post graduate course the respondent no. 2 had permission under Section 10-A of the Indian Medical Council Act 1956 and it was on the basis of this permission that the petitioners joined the course, the petitioners' medical qualifications on the basis of the post graduate course of study offered by respondent no. 2 shall be a recognized medical qualification for the purposes of the said Act, irrespective of the fact that the respondent no. 2 has decided to stop taking fresh students and has decided to dis-continue the college-respondent no. 2. It would otherwise, in any event, be unjust and unfair to the petitioners if they are told that though at the time of their joining the course, college was recognized, but they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course, or just before completion of the course, the respondent no. 5 decided to close down respondent no. 2.

10. We also gain support for this view of ours from 2 judgments of the Apex Court in the matters of (1) Suresh Pal and Others Vs. State of Haryana and Others, AIR 1987 SC 2027 : (1987) 2 SCC 445 and (2) Apollo College of Veterinary Medicine Vs. Rajasthan State Veterinary Council, AIR 2015 SC 112 : (2014) AIRSCW 5466 : (2014) 8 SCALE 721 . Though both these judgments do not relate to the provisions of the Indian Medical Council Act, 1956, the principles reflected therein emanating therefrom squarely apply to the present case as well. In the Suresh Pal matter (supra), paragraph-3 reads as under :-

"3 We are of the view that since at the time when the petitioners joined the course it was recognised by the Govt. of Haryana and it was on the basis of this recognition that the petitioners joined the course, it would be unjust to tell the petitioners now that though at the time of their joining the course it was recognized, yet they cannot be given the benefit of such recognition and the certificates obtained by them would be futile, because during the pendency of the course it was derecognized by the State Govt. on 9th January, 1985. We would, therefore, allow the appeal and direct the State Govt. to recognize the certificates obtained by the petitioners and others similarly situate as a result of completing the certificate course in Shri Hanuman Yayayam Prasarak mandal Amravati for the purpose of appointment as Physical Training Instructor in Govt. Schools in Haryana. Of course, if any person has joined the certificate course after 9th January, 1985 he would not be entitled to the benefit of this order and any certificate obtained by him from the said Institute would be of no avail. There will be no order as to costs of the appeal."

11. In the Apollo College matter (supra) paragraphs-37, 39, 45 and 47 read as under :-

"37 Though the heading of Section 21 shows "withdrawal of recognition" and one may say that it is not specified that the College or Institution affiliated to veterinary institution is required to be recognized by the Central Government, but Section 15 read with sub Section (4) of Section 21 empowers the Central

Government to make an entry in the appropriate Schedule (First Schedule) declaring that veterinary qualification granted to students of a specified College or Institution affiliated to any Veterinary Institution (University) shall be a recognized veterinary qualification only when granted before a specified date or that the said veterinary qualification shall be recognized veterinary qualification in relation to the said College or Institution affiliated to the University only when granted after a specified date.

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39. To draw a similarity, counsel for the parties referred to provisions of the Indian Medical Council Act, 1956. Section 15 of the Indian Veterinary Council Act, 1984- which deals with "recognition of veterinary qualifications granted by veterinary institution in India" is in pari materia with Section 11 of the Indian Medical Council Act, 1956 which is as follows:-

"11. Recognition of medical qualifications granted by Universities or medical institutions in India.-(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act. (2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consulting the Council, may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date."

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45. The Division Bench of the High Court, in our opinion, was manifestly in error in holding that since B.V. Sc. and A.H. degree possessed by the students was not one obtained from a recognized College it could not be treated as a valid qualification for the purpose of registration under the Veterinary Council of India (Registration) Regulations, 1992 and for other purpose.

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47. In the facts and circumstances of the case, we are of the view that the Division Bench of the High Court should have given a possible legal solution in respect to the students who have already passed out from the Apollo College and

the Mahatma Gandhi College affiliated to Swami Keshwanand Rajasthan Agricultural University, Bikaner by directing the Central Government to make appropriate amendment in the First Schedule of the Indian Veterinary Council Act, 1984 so as to include the Apollo College and the Mahatma Gandhi College in the First Schedule for the purpose of recognition of B.V. Sc. and A.H. degree on or before 11th July, 2011 in so far as it relates to Apollo College and 8th December, 2011 in respect of Mahatma Gandhi College. We direct accordingly. So far as the other students who have been admitted in the Apollo College and the Mahatma Gandhi College and are pursuing their studies are concerned the Central Government is directed to call for a fresh report from the Veterinary Council of India and to pass appropriate order u/s 15 (2) r/w Section 21 (4) of the Indian Veterinary Council Act, 1984. In case it is not possible to recognize the Apollo College and the Mahatma Gandhi College beyond such date as ordered above, the Veterinary Council of India is directed to take steps to transfer the students to some other recognized Colleges against their corresponding year to complete the B.V. Sc. and A.H. course."

12. The petitions are hereby disposed of by observing that the medical qualifications that the petitioners will be granted when they successfully clear their examination conducted by respondent no. 2/4 shall be a recognized medical qualification for the purposes of the Indian Medical Council Act, 1956. The respondents to recognize the post graduate degree that may be awarded to the petitioners on completion of post graduation examination scheduled to be held in May-2015 or May 2016, as the case may be, for all purposes.

13. Rule accordingly is made absolute. No costs.