

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.10290/2009**

% **Date of Decision: 22.07.2009**

Shakkir Mohammed Kunhi Petitioner
Through Ms.Megha Grewal, Advocate

Versus

Medical Council of India and another Respondents
Through Mr.T.Singhdev, Advocate for the
respondent No.1.
Mr.Arvind Sharma, Advocate for the
respondent No.2.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J. (ORAL)

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1. The petitioner has challenged Screening Test Regulations, 2002 contemplating compulsory screening test for practical training for the students studying in foreign universities and programme to undergo practical training in India.

2. The petitioner pleaded that he is undergoing MBBS Degree Certificate Course at China Three Gorges University. The said institution is an approved institution by World Health Organisation (WHO).

3. The petitioner asserted that he left India after obtaining eligibility certificate as per Eligibility Certificate Regulation, 2002 framed by Medical Council of India. The petitioner wants to undergo practical training in India and he seeks a provisional registration for practical training after completing 4½ years of theory studies from the Medical Institution in China.

4. In order to obtain a Degree of MBBS, petitioner is required to undergo a compulsory practical training for one year. The medical institution in China has issued a no objection certificate to the petitioner to undergo practical training in India.

5. Under the Regulations of Medical Council of India, if a candidate who has undergone theoretical studies in a foreign university wants to undergo practical training for provisional registration he has to qualify a screening test. The petitioner has challenged the regulations for screening test for undergoing practical training on the ground that the students in India who undergo theoretical studies in different medical institutions are at par with the students who undergo theoretical studies in foreign universities and they are not required to undergo any screening test. In the circumstances, it is contended that the petitioner has been denied a valuable right and discriminated against by having to

undergo a screening test for provisional registration for undergoing practical training.

6. The regulation contemplating a screening test for undergoing practical training in India after undergoing theory courses in a foreign university is also challenged by the petitioner on the ground that screening test is conducted in September and March of every year and in case for some reasons the petitioner is not able to undergo screening test in September, his one-and-a-half year will be lost as the Degree is awarded once in a year in July by the medical institution in China.

7. Clause 3 of the Screening Test Regulation, 2002 issued by notification No.MCI-203(9)/2001-Regn- dated 13th February, 2002 is as under:-

“3. An Indian citizen possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or permanent registration with the Medical Council of India or any State Medical Council on or after 15.03.2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of Section 13 of the Act:

Provided that a person seeking permanent registration shall not have to qualify the screening test if he/she had already qualified the same before getting his/her provisional registration.”

8. The petitioner has challenged the Regulation on the ground that he is not seeking any right to practice and the prayer is only limited to

permit the petition for provisional registration for undergoing training and in the circumstances screening test for provisional registration is not required and it is discriminatory. The petitioner has relied on *Sanjeev Gupta and others v. Union of India and another*, (2005) 1 SCC 45 and *Medical Council of India v. Indian Doctors From Russia Welfare Associations and Others*, (2002) 3 SCC 696. The petitioner has contended that he legitimately expected that he will not be put to any further condition after the eligibility certificate was issued by the Medical Council of India for studying abroad in a medical institution approved by World Health Organisation.

9. Para 2E and 2G of the Eligibility Test Regulation, 2002 are as under:-

“2(e) “Provisional Registration” means provisional registration in a State Medical Register or Indian Medical Register for the purpose of undergoing practical training in India as prescribed and for no other purpose by an Indian Citizen possessing any primary medical qualification but has not 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;

2(g) “Provisional Registration” means provisional registration in a State Medical Register or Indian Register for the purpose of undergoing practical training in India as prescribed and for no other purpose by an Indian citizen possession any primary medical qualification but has not 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;”

10. In Medical Council of India (*supra*), the Supreme Court had approved the guidelines framed by Medical Council of India and were made applicable to all persons who were not even party to the said case. Similarly, in Sanjeev Gupta and others (*supra*), the Supreme Court had upheld its decision in Medical Council of India decided in 2002. It was held that MCI is an expert body which can lay down the criteria for grant of permanent registration to a person to practice Medicine and involve himself in the patient care and management. It was further held that a person who is not duly qualified as prescribed by MCI, cannot be permitted to involve himself in public health care and play with the lives of human beings and it is not for the court to decide as to who is duly qualified to practice Medicines. Medical Council of India was held to be an expert body and the best judge to do so.

11. If the Regulation for practicing in India contemplate screening test and even undergoing training in some case which has been upheld by the Supreme Court, a similar regulation for undergoing screening tests before undergoing practical training, cannot be faulted on the ground that the students who complete their theoretical studies in India in the institution recognised by the Medical Council of India and affiliated to different universities are not liable to undergo screening test and they are at par with the students of the foreign universities and medical institution which are approved by Medical Council of India.

12. The plea of the petitioner has a basic fallacy and assume that the approval by WHO is equivalent to recognition by Medical Council of India and the affiliation of the medical institutions to various universities. Merely because the eligibility certificate is issued to a candidate who wants to undergo the course of Medicine in foreign university, it does not entitle him to obtain a degree from foreign university and get himself registered for practising in India without undergoing screening test and training in some cases, if required, in accordance with the regulations of MCI. *A fortiori* if a candidate who has completed theoretical studies from a foreign university wants to undergo a practical training in India he must also undergo the screening test. The objective of screening test is to ascertain/judge the theoretical knowledge of a candidate in relation to syllabus and the course of studies in colleges and institutions recognized by Medical Council of India. Merely because an eligibility certificate had been issued does not lead to an inference that after undergoing theoretical studies in an institution approved by World Health Organisation, the preparedness of such a student is in consonance with the theoretical medical studies required in India according to the syllabus and the course of studies of the recognised and affiliated medical institutions in this country. Consequently, the rationale of conducting a screening test for candidates from foreign universities for the purpose of undergoing practical training in India cannot be faulted.

13. This cannot be disputed by the petitioner that unless a policy decision is absolutely capricious, unreasonable, arbitrary and based on *ipse dixit* of the executive authority or is in violation of any constitutional or statutory mandate, the court inference is not called for. The policy decision is in the domain of the executive authority of the State and the courts do not embark on the adequacy of the policy. The petitioner has contended that the petitioner has been discriminated being a student who has completed theoretical course from an institution in a foreign country vis-a-vis a students who complete the theoretical course in India.

14. This is well established that while Article 14 forbids class legislation, it does not forbid reasonable classification. Permissible classification must fulfil two conditions, namely, (i) that the classification must be found on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and (ii) that the differentia must have a rationale relation to the object sought to be achieved by the statute in question. The classification can be found or based on different basis, namely, geographical, or according to objects or occupations of the like but there must be nexus between the basis of classification and the act under consideration.

15. The petitioner who has completed theoretical studies from foreign institutions, even from institutions approved by WHO, cannot be equated with the students of institutions in India. Approval by WHO of foreign universities and institutions cannot be equated with the recognition granted by the concerned authorities in India and affiliation of such institutions to appropriate universities or bodies. Classification between these two types of students cannot be termed irrational or illogical nor it can be inferred that the classification does not have any rational to the objective sought to be achieved in the facts and circumstances.

16. Consequently the petitioner cannot claim that he cannot be directed to appear in screening test for the purpose of appearing for practical training. The petitioner is also not entitled to avoid screening test on the ground that if he is not able to appear in September, 2009 then he will waste his one year as has been contended on his behalf. The petitioner is liable to appear in screening test subject to his eligibility for the same in accordance with rules and regulations.

17. Writ petition is, therefore, without any merit and it is dismissed. No order to cost.

July 22nd , 2009
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ANIL KUMAR, J.