

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

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Date of Decision: 06.08.2013

+ W.P.(C) 7856/2012 and CM No.19738/2012

PRIYANKA GUPTA

..... Petitioner

Through:Mr.K.K.Jha, Advocate

versus

UNION OF INDIA & OTHERS

..... Respondents

Through:Mr.Roshan Lal Goel, Advocate for R.1

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court passed out her 10+2 from West Bengal Council of Higher Education with second division. In the aforesaid examination, she obtained 35 marks out of 100 marks in chemistry. A perusal of her mark sheet would show that she had opted for two language subjects (English B and Hindi A), 3 Compulsory Elective (Biology, Mathematics and Physics) and one Optional Elective i.e Chemistry. She obtained 35 out of 100 marks in theory and 38 out of 100 marks in practical in Chemistry. She was declared passed in second division. The mark sheet also shows the following requirement with respect to the pass marks:-

“Clause 2(b)

In Laboratory-based subjects of 200 marks other than Music, Fine Arts & Crafts, Computer Science (Revised Syllabus) and Modern Computer Applications pass mark is 48 in theoretical paper and 12 in practical paper. In Music and Fine Arts & Crafts pass mark is 27 (out of 90) in theoretical paper and 33 (out of 110) in practical paper. In Computer Science (Revised Syllabus) and Modern Computer Applications pass mark is 42 (out of 140) in theoretical paper and 18 (out of 60) in practical paper.”

It would, thus, be seen that every candidate was required to obtain atleast 48 marks in theory paper of Chemistry which admittedly is an laboratory based subject. The mark sheet issued to the petitioner by Bengal Council of Higher Education therefore means that she had passed in the language subjects as well as Compulsory Elective but not in Chemistry, which is the optional elective, she having obtained 35 marks in the theory as against requirement of a minimum 48 marks.

2. The petitioner before this Court appeared in the entrance examination of MBBS examination in B.P.Koirala Institute of Health Sciences, Nepal in October 2006 and completed her MBBS course from the said Institute in the year 2011. After passing out her MBBS examination from B.P.Koirala Institute of Health Sciences, Nepal, the petitioner applied to the respondent

Medical Council of India for issuance of eligibility certificate which permits a person to appear in the screening test to be conducted for being registered as the medical practitioner. The application of the petitioner, however, was rejected by the Medical Council of India on the following grounds:-

“ On scrutiny of mark-sheet it is noted that you have failed in the subject of Chemistry theory at 12th class.

As per regulations of the Council, the candidate has to pass separately each subject of Physics, Chemistry, Biology & English for admission to MBBS course.

Accordingly, your request for grant of Eligibility Certificate is regretted and your application is rejected.”

3. Being aggrieved from the refusal to grant eligibility certificate required under Section 13(4B) of the Indian Medical Council Act 1956, the petitioner is before this Court by way of this writ petition seeking declaration of the said impugned letter to be violative of her fundamental rights under Article 14, 19(1)(g) and 21 of the Constitution and a direction to MCI to permit her to appear in the Screening Test.

4. Section 13(4)(b) of Indian Medical Council Act 1956 reads as under:-

“A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an

eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A)”

5. Admittedly, B.P. Koirala Institute of Health Sciences, Nepal is a medical institution in Nepal and, therefore, without obtaining eligibility certificate from Medical Council of India, the petitioner cannot appear in the Screening Test. Though the persons who had acquired medical qualifications from Foreign Medical Institutes or had obtained admission in Foreign Medical Institutions before commencement of the Indian Medical(Amendment) Act, 2001 are not required to obtain eligibility certificate and are only required to qualify the Screening Test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register, admittedly, the petitioner took admission and got MBBS degree only after the aforesaid amendment Act had already come into force. Therefore, eligibility certificate was a pre-requisite condition for the petitioner to appear in the Screening Test.

6. The learned counsel for the Medical Council of India has drawn my attention to Eligibility Certificate Regulations 2002 framed by Medical Council of India under Section 33 of the Indian Medical Council Act and Clause 2(f) of the said Regulation provides that ‘qualifying examination’

means the examination to be qualified to become eligible for admission to MBBS course in India, as prescribed in the Graduate Medical Education Regulations 1997. Similarly, the Screening Test Regulations 2002 which also have been framed by Medical Council of India, in exercise of the powers conferred by Section 33 of Indian Medical Council of India, also gives the same meaning to the expression 'qualifying examination.' Therefore, before a person can seek eligibility certificate or appear in the Screening Test, he must have passed out qualifying examination, as prescribed for the Graduate Medical Education 1997.

7. Regulation 4 contained in Chapter II of the Medical Council of India Regulations on Graduate Medical Education, 1997, to the extent it is relevant reads as under:-

“The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 High Secondary Examination after a period of 12 years study, 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 for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.”

It would, thus, be seen that in order to be admitted to a medical course, a person is necessarily required to pass out Higher Secondary Examination or Indian School Certificate Examination equivalent to 10+2, Higher Secondary Examination with Chemistry, Physics and Biology as compulsory subjects and either mathematics or any other elective subjects along with English, in the said examination. If a person has not opted for physics, chemistry or biology, he is not eligible to be admitted to a Medical course. Consequently, the petitioner ought to have passed out chemistry, biology and physics besides passing out mathematics or any other elective subject and English at a level not less than the core course for English. Since, as per the Rules of West Bengal Council of Higher Education, it was necessary for the petitioner to have obtained at least 48 marks in theory in chemistry subjects, she did not pass out in the said subject though she did pass out in the remaining five subjects. The petitioner having not passed out chemistry, her marks in theory being less than 48, she is not eligible for admission to MBBS course in terms of Regulation 4(2)(a) contained in Chapter II of the Medical Council of India Regulations on Graduate Medical Education 1997. Since the qualifying examination for the purpose of eligibility as well as the Screening Test are the same as for the purpose of

admission to MBBS, the petitioner is not eligible either for issue of an eligibility certificate or to sit in the Screening Test.

8. Learned counsel for the petitioner states that the admission test for the purpose of admission to B.P. Koirala Institute of Health Sciences, Nepal was also conducted by MCI and the eligibility of the petitioner ought to have been checked at that time. This, however, is strongly disputed by the learned counsel for the respondent MCI.

However, I find no specific averment in the writ petition to this effect and even otherwise there is no material on record to show that the aforesaid examination was conducted by MCI.

9. For the reasons stated hereinabove, I find no merit in the petition and the same is accordingly dismissed. The original mark sheets, which the petitioner had filed in the Court be returned to him, under acknowledgement, after retaining its photocopies from both sides, on record.

V.K. JAIN, J

AUGUST 06, 2013/ks