

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 14.10.2014

+ **W.P.(C) 4316/2012 & CM No. 8962/2012**

DR. C.M. PRASAD

..... Petitioner

versus

UNION OF INDIA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr N. Sreedhar.

For the Respondents : Mr Abhay Prakash Sahay, CGSC for R-1.

Mr R. Singhdev for R-2.

CORAM:-

HON'BLE MR.JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(a) *directing the Respondents to grant medical licence to the Petitioner to enable him to practice medicine in India.*”

2. Briefly stated the relevant facts are that the petitioner had attended Medical School in CD. Juarez, Mexico, and graduated in the year 1984. Thereafter, the petitioner cleared the requisite examination conducted in USA for practicing as a medical doctor in that country. The petitioner states that he completed four years Psychiatry residency programme at St. Elizabeths Hospital in Washington D.C., U.S.A. in the year 1988 and one year Neurology residency training at Mt. Sinai Hospital in New York, U.S.A. in the year 1989. It is further stated that petitioner has been in

active medical practice in U.S.A. since 1989 and has also undertaken diploma courses in Psychiatry and Addiction Medicine.

3. As the petitioner was desirous of returning back to India, he made an application to the Medical Council of India (hereafter 'MCI') for being registered as a medical practitioner on 29.09.1997. The petitioner's application was rejected by MCI by a letter dated 22.03.1999 as the petitioner's primary medical qualification from Mexico was not recognized by MCI for the purposes of the Indian Medical Council Act, 1956 (hereafter 'the Act').

4. Aggrieved by the rejection of its application, the petitioner has filed the present petition asserting that he is a qualified medical practitioner and thus, ought to be enrolled as a medical practitioner in India.

5. The Supreme Court while hearing the appeals in **Medical Council of India v. Indian Doctors from Russia Welfare Association: Civil Appeal No.2779/2000 and other matters** had made various suggestions for evolving an equitable solution to the problem being faced by students who had undertaken courses in the countries of erstwhile USSR.

6. Pursuant to the suggestions made by the Supreme Court, a meeting of the general body of MCI was held on 31.03.2000 and a scheme was formulated for consideration of the Supreme Court. The said scheme included conducting a screening test for accepting the medical qualification of students who had completed their medical courses overseas. The decisions of MCI taken on 31.03.2000 were accepted by the Supreme Court and an interim order dated 17.04.2000 was passed in that matter.

7. In order to give effect to the decisions taken during the course of the proceedings before the Supreme Court of India, Section 13 of the Act was amended by enactment of Indian Medical Council (Amendment) Act, 2001 and by its virtue, sub Section 4(A) and 4(B) were introduced in Section 13 of the Act.

8. Section 33 of the Act was also amended by introducing clause (ma) for providing modalities for, *inter alia*, conducting a screening test. Sub sections 4(A) and 4(B) of Section 13 and clause (ma) of Section 33 of the Act introduced by the Indian Medical Council (Amendment) Act, 2001 are quoted below:-

"13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.-

xxxx xxxx xxxx xxxx xxxx

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4B) 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):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

xxxx xxxx xxxx xxxx xxxx

33. Power to make regulations.- *The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for:-*

xxxx xxxx xxxx xxxx xxxx

(ma) the modalities for conducting screening tests under sub-section (4A), and under the proviso to sub-section (4B), and for issuing eligibility certificate under sub-section (4B) of section 13.”

9. Subsequently, the Screening Test Regulations, 2002 were framed and came into effect from 15.03.2002. Regulation 3 of the said Regulations is relevant and is quoted below:-

“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.”

10. In view of the legislative amendments introduced by the Indian Medical Council (Amendment) Act, 2001 and the Screening Test Regulations, 2002 approved by the Central Government, the petitioner is entitled to be enrolled on the Indian Medical Register or Medical Registers maintained by the State Medical Councils, if the following conditions are complied with:-

- (a) That the medical qualification obtained by the petitioner in an another country entitles the petitioner to practice as a medical practitioner in that country;
- (b) That the petitioner qualifies the screening test in terms of the Screening Test Regulation, 2002

11. The MCI has also issued a Circular No.MCI-203(1)(Gen.)/2013-Regn./59243 dated 24.02.2014 clarifying the above position.

12. It is contended by the learned counsel for the petitioner that the Screening Test Regulations, 2002 would not be applicable since the

petitioner had obtained his qualifications prior to 15.03.2002. I am unable to accept this contention as, admittedly, the petitioner's name has not been enrolled on the Indian Medical Register or any other Medical Registers maintained by the State Medical Councils in India and in terms of Regulation 3 of the Screening Test Regulations, 2002, qualifying a screening test by a prescribed authority would be mandatory for enrolment as a medical practitioner after 15.03.2002.

13. Indisputably, the petitioner's stated qualifications entitle the petitioner to practice medicine in Mexico and the petitioner has been engaged in medical practice in U.S.A. In view of the above, the writ petition is disposed of with the observation that the petitioner would be entitled for a medical licence provided the petitioner qualifies the screening test conducted in terms of the Screening Test Regulations, 2002. The application also stands disposed of. No order as to costs.

VIBHU BAKHRU, J

**OCTOBER 14, 2014
RK**