

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

LPA no.104/2021

Union of India through Secretary Ministry of External Affairs, Government
of India, New Delhi

.....Appellants(s)

Through: Mr T.M.Shamsi, DSGI with Ms Rehana Qayoom, Advocate

Versus

1. Hadiya Chisti D/o Abdul Haq Chisti R/o Nowgam, Srinagar

....Contesting Respondent

2. Medical Council of India through its Secy, Pocket 14, Sector-8 Dwarka,
New Delhi

3. National Board of Examinations Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg, New Delhi

4. J&K Medical Council through its President House no.28, B/C First Floor
Gandhi Nagar, Jammu

....Proforma Respondents

.....Respondent(s)

Through: Mr Jahangir Iqbal Ganai, Sr. Advocate
with Mr Syed Faheem Masood,
Mr Irshad Mohi-ud-din Bhat, Advocate
Ms Shugufta, Advocate

CORAM:

**HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR JUSTICE RAJESH SEKHRI, JUDGE**

**ORDER
31.08.2023**

1. This appeal is directed against judgement dated 4th December 2019,
passed in OWP no.2044/2018, titled as Hadiya Chisti v. Union of
India and others, to the extent it directs appellant to consider the case
of contesting respondent for recognition of her qualification of MBBS

and also for registering her as a Medical Practitioner on the rolls of Indian Medical Register or the State Medical Registry.

2. We have heard learned counsel for parties. We have gone through the writ record as also judgement impugned, and considered the matter.
3. Ms Hadiya Chisti (respondent no.1 herein) preferred a writ petition, being OWP no.2044/2014, to direct writ-respondents (respondents 2 to 4 herein) to issue eligibility certificate in her favour so as to allow her to appear in the Foreign Medical Graduate Examination/ Screening Test conducted by the National Board of Examination, with a further direction to Medical Council of India to consequently enroll her as a registered medical practitioner and enter her name in the Indian Medical Register.
4. Writ-respondents, including the present appellant, resisted the writ petition. The Writ Court, after going through the rival contentions of the parties, vide judgement impugned disposed of directing writ-respondent no.1/appellant herein to consider the case of petitioner for recognition of her qualification of MBBS and also for registering her as Medical Practitioner on the rolls of Indian Medical Register or the State Medical Registry, as the case may be, purely on equitable considerations. The Writ Court directed writ-respondents to take a decision within four weeks from the date copy of the judgement was served upon them.
5. Since impugned judgement was not implemented within the time prescribed, writ-petitioner/respondent no.1 moved a petition for initiation of contempt proceedings. Statement of facts/Response was

filed, stating therein that case of writ-petitioner/respondent no.1 was considered and rejected as being without merit.

6. Learned Single Judge while considering the contempt petition, vide order dated 31st May 2021, observed that statement of facts filed by respondents was not a compliance and directed that before proceeding further respondents would reconsider the claim of writ-petitioner in tune with the mandate of observations and decision rendered by the learned Writ Court while keeping in view the stand already taken in writ petition and discussed by the learned Writ Court and directions passed therein.
7. Nevertheless, appellant has come up with instant appeal, throwing challenge judgement impugned.
8. According to learned counsel for appellant the learned Writ Court has not appreciated and considered the matter in its right and correct perspective inasmuch as writ petitioner/respondent no.1 is not possessed of a recognized medical qualification and consequently she cannot be allowed to be enrolled as a medical practitioner in the country. It is contended that reliefs prayed for by writ petitioner/respondent no.1 in her writ petition could not have been given in law as those were against the Constitution of India and Indian Medical Council Act, 1956 and, therefore, direction contained at paragraph 22 of judgement impugned is bad in law and requires to be set-aside. He also avers that since the college from which petitioner obtained her medical degree is not recognized with MCI, therefore, petitioner is not qualified to appear in FMGE Screening Test.

9. We have given our thoughtful consideration to the submissions made by learned counsel for appellant and grounds raised in the appeal.

10. The learned Writ Court while rendering judgement impugned has taken care of all the aspects of the matter as ingeminated in the instant appeal, which need not be reproduced and/or reopened again for discourse. The learned Writ Court has been seized of the all the facets concerning subject matter of writ petition including that the Medical Council Act, 1956, and the Rules and Regulations framed thereunder do not provide any statutory mechanism to deal with the medical institutions located in the territories of India where the Indian Government and its institutions do not exercise any control nor the Government of India has informed its citizens with regard to status of such medical institutions which are opening on its soil but are under the administrative control of a foreign country. These imperative and fundamental points have been dealt with and squared off by the learned Writ Court while rendering the judgement impugned. Resultantly, impugned judgement does not call for any interference and the appeal in hand is liable to be dismissed.

11. For the reasons discussed above, the instant appeal is dismissed.

12. It may be mentioned here that appellant may reconsider the case of writ petitioner/respondent no.1 on the same lines as has been directed by the learned Writ Court.

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Srinagar
31.08.2023
Ajaz Ahmad, PS

Whether approved for reporting? Yes/No.