

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 10170 OF 2015

Mr. Rohan Rajendra Pandey ... Petitioner

Vs

1. Union of India & ors. ... Respondents

Mr. Anand Pande for the Petitioner.

Mr. Arun Kumar Roy for the Respondent No.1 - UOI.

Mr. L.S. Shetty, senior counsel i/b L.S. Shetty & Associates for the Respondent No.2.

Mr Ganesh Gole for the Respondent No.3.

Ms. Sushma Bhende, AGP, for the Respondent No.4 – State.

**CORAM : S.C. DHARMADHIKARI &
G.S. PATEL, JJ.**

MONDAY, 29TH FEBRUARY, 2016

P.C. :

1. The petitioner before this Court, after being successful at the Higher Secondary Certificate Examination was desirous of pursuing a career in medicine. He appeared for a Common Entrance Test. In the list of meritorious students, the petitioner's name appeared and thus he was admitted to the Bachelor's

course in medicine, namely, M.B.B.S. He thereafter cleared the one year compulsory internship. Thereafter, he was interested in pursuing his post-graduate studies in medicine. He appeared for a common entrance test and conducted for the academic year 2013-2014. The petitioner also found that the Central Government for the first time introduced one single umbrella Common Entrance Test for admissions to both aided and unaided medical colleges in India. That was styled as National Education Common Entrance Test (for short NEET) . That was conducted by the respondent No.2 on behalf of the first respondent. The petitioner appeared for this examination and was declared as qualified and eligible on 5th June, 2013, Unreserved Seats / UR for short.

2. The result as notified and with its photocopy is Annexure-A to the petition. However, in the meanwhile, several unaided medical institutions in India challenged the decision of the Central Government to conduct such a single umbrella test and the matter was carried right upto the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India set aside such a test for the academic year 2014-2015. However, the past test having

been already conducted, its results declared that the Hon'ble Supreme Court allowed the process in terms thereof to be carried forward. The order passed by the Hon'ble Supreme Court on 1st August, 2013, in Writ Petition (Civil) No.433 of 2013, copy of which is Annexure-B, thus enabled all the States and the candidates to complete the admission process. The personal counselling was held in terms of the Notification dated 17th August, 2013. The petitioner having been successful in such counselling, obtained an admission to a diploma course styled as Diploma in Oto - Rhino - Laryngology. Annexure-D is a photocopy of the select list and Annexure-E is a copy of the letter issued dated 29th August, 2013, of being successful.

3. Thus, this course commenced from that date and after completing the sessions, the petitioner appeared for an examination. He was successful at the diploma course examination conducted and was declared pass in June, 2015.

4. That is how the petitioner, relying upon these certificates, copies of which are Annexure G, Annexure-G-1 and Annexure-H then approached the second respondent - board.

5. This time he was seeking to pursue the DNB course. The petitioner appeared for this DNB Secondary Post Graduate Entrance Examination and cleared it.

6. Now, the counselling for the seats is underway and would be in full swing from 3rd March, 2016. Mid-way, the petitioner has been informed that he has not been able to complete the one-year diploma course within the time stipulated for eligibility for the post diploma – common entrance test of July, 2015. Clause 3.1 is relied upon and which reads as under :

“3.1. Candidates who have passed the final examination leading to the award of Post Graduate Diploma from Indian Universities which are duly recognized as per provisions of Indian Medical Council Act 1956, Govt of India i.e. have passed / Passing the final examination for Post graduate diploma on or before 30th June 2015 can apply for the Post diploma CET examination in the same Broad speciality. Candidates shall have completed his / her 2 years of post diploma training by 30th June 2015. A proof to this effect has to be produced at the time of counselling for admission to July 2015 admission session.”

7. Upon perusal of this clause together with the endorsement at page 174 of the paper-book, we find that the respondent No.2 has approached the matter in a manner not conducive to

encouraging students like the the petitioner to gain higher qualifications or to fulfill their desire of being a post-graduate in medicine or specialized faculty. The second respondent was aware that students like the petitioner are not responsible for the time schedule not being adhered to. In the case of Mrudul Dhar it was not the students but the Managements who had challenged the decision to hold a common entrance test. The unaided colleges did not desire to be part of such test and wanted their seats to be kept away or out of the same. It is that controversy which consumed a lot of time and that is how the Hon'ble Supreme Court, post its clarificatory order, allowed the process for the past year i.e. 2013-2014 to be completed. It is that year with which we are concerned and equally the petitioner. The petitioner cleared his diploma course but the requisite two year period could not be undergone and completed. That was because the academic sessions commenced late and only after the clarificatory order of the Hon'ble Supreme Court of India, copy of which is Annexure-B to the petition.

8. In the circumstances, having completed all the terms but the duration date-wise or year-wise could not be of exactly two

years, that the reliance by the Board on Clause 3.1 reproduced above.

9. We do not think that the Board was justified in placing reliance on clause 3.1 and stating that its rigour could not be relaxed even in the present situation.

10. That stand of the Board does not seem to be carrying the intent and purpose of this clause forward. The Board in the affidavit-in-reply tendered today has stated that it should not have relied upon this clause and strictly applied it to deny the benefit to the petitioner. Rather, Mr. Shetty, learned counsel appearing for the Board is fair in stating that the Board will abide by this Court's orders and directions, but this Court must ensure that the eligibility criteria prescribed by the Medical Council of India is not relaxed or done away with in any manner.

11. In that regard, Mr. Shetty relies upon Clause 13.2 of the said criteria which reads as under :

“13.2 All candidates joining the Post Graduate training programme shall work as full time residents during the period of training,

attending not less than 80% (Eighty percent) of the training during each calendar year, and given full time responsibility, assignments and participation in all facets of the educational process.”

12. After having perused it in its entirety, we find that the National Board of Examinations is justified in urging that not less than 80% of the attendance during the training period of each academic year is the condition which must be fulfilled by the candidate like the petitioner. Hence, we called upon Mr. Pandey to take instructions.

13. Mr. Pande in the presence of the petitioner in Court states that the petitioner has fully complied with clause 13.2 as reproduced above. If that is how the matter is approached by the Board but the petitioner is ready and willing to furnish proof of his compliance with clause 13.2 as reproduced above, then, we have no hesitation in allowing the Writ Petition. We allow the petitioner to apply and thereafter participate in the on-going counselling programme on his furnishing the requisite proof to the satisfaction of the second respondent-board about compliance with clause 13.2 reproduced above.

14. The requisite shall be done by the petitioner on 3rd March, 2016. The Board shall verify the documents / certificates produced by the petitioner and allow him to participate in the counselling process in the event such certificates evidence due compliance with clause 13.2, as reproduced above.

15. We are really surprised that in this age of Information Technology, the verification and scrutiny by the Board should take months together. The Board, the MCI, the students and the hospital or the college which he or she attended are all connected either by e-mail or by other modes which would ensure that the certificates are scrutinized promptly and the verification is done on-line. All that is required is that if the e-mail is received in the Dean's or Superintendent's or Administrative Office or any such request comes on-line, the same is processed. If the records have to be traced out of these students and for the year 2013-2014, even these ought to be updated and maintained on-line. If these systems are in place and it is a full fledged administrative office, at every Government Hospital, Government College or Corporation College, then, in this age, the requests as are forthcoming from the students as equally the authorities

perplex and surprise us. If we find no adherence to the systems which are put in place, then, this would be an additional ground and reason for which we will impose cost and not grant the time as requested by Mr. Shetty in other matters. We do not for a moment suggest either relaxing or diluting the rigour of any regulations, requirements pertaining to eligibility. There should be no compromise and none as far as quality of medical education and treatment is concerned. Our anxiety is only if meritorious students have to be subjected to this process of all the way coming to Delhi but with all or some the documents not allegedly meeting the requirements of the authorities, being rejected, forcing them to approach the High Courts. This would only mean that the High Court's time is wasted in such fruitless and avoidable litigation.

16. The Writ Petition is allowed in the above terms with no order as to costs.

All concerned to act on an authenticated copy of this order.

G.S. PATEL, J.

S.C. DHARMADHIKARI, J.