

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.02.2016

Pronounced on : 18-02-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 30328 of 2015
and
M.P. No. 1 of 2015

Ms. Sneha Manimurugan

.. Petitioner

Versus

1. The Secretary
Medical Council of India
Pocket-14 Sector, Dwaraka
Phase-1, New Delhi - 110 077
2. The Secretary
Department of Health & Family Welfare
Government of Tamil Nadu
Fort St. George, Chennai - 600 009
3. The Academic Officer
Dr. MGR Medical University
Guindy, Chennai - 600 032
4. The Dean
PSG Institute of Medical Sciences & Research
Off. Avinashi Road, Kalluri Nagar
Peelamedu, Coimbatore - 641 004

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the third respondent to issue eligibility certificate to the petitioner under NRI Category for admission to MBBS Course for the academic year 2015-2016 and further direct to admit the petitioner in the MBBS Course for the said academic year in the fourth respondent institution on the basis of eligibility certificate.

For Petitioner : Mr. P. Saravanan
for M/s. Paul & Paul

For Respondent : Mr. V.P. Raman for R1
Mrs. P. Rajalakshmi
Additional Government Pleader for R2
Mr. Anand David for R3
Mr. A. Jeenasenan for R4

ORDER

The petitioner has come forward with this writ petition praying for issuance of a Mandamus to direct the third respondent to issue eligibility certificate to her under NRI Category for admission to MBBS Course for the academic year 2015-2016 and to issue further direction to admit her in the MBBS Course for the said academic year in the fourth respondent institution on the basis of such eligibility certificate.

2. The facts of the case which led to the institution of this writ petition are as follows:-

(i) According to the petitioner, she is an overseas citizen of India having completed her schooling in Singapore. The petitioner studied in Singapore Cambridge GCE Standard and passed "A" level examination in more than five subjects viz., English, Maths, Physics and Chemistry and few other subjects. The petitioner completed her schooling during December 2013. According to the petitioner such qualification obtained by her is equivalent to senior school certificate of Central Board of Secondary Examination possessed in India. Apart from this, the petitioner also undergone private course of study in Biology with other subjects for two years.

(ii) According to the petitioner, she aspired to become a Doctor and therefore, after completion of her schooling, she applied for MBBS course with the fourth respondent institution, which is affiliated to the third respondent University, under the NRI quota for the academic year 2014-2015. At that time, the fourth respondent stated to have informed the petitioner to obtain an eligibility certificate from the third respondent. When the petitioner approached the third respondent, she was informed that biology subject was not one of the subjects or part of the regular curriculum underwent by her in Singapore and therefore, she was advised to take biology examination. On the basis of such advise, the petitioner has joined biology course in the National Institute of Open Schooling (NIOS) which is an autonomous institution established under the Ministry of Human Resources Development, Government of India. Even after successful completion of the course during April 2014, the third respondent, appears to have advised the petitioner to pursue a comprehensive course consisting of Physics, Chemistry, Biology and English in one stream and not biology alone. Therefore, once again, the petitioner joined NIOS and cleared all the subjects as instructed by the third respondent. The petitioner also obtained a certificate from NIOS to that effect.

(iii) According to the petitioner, the first respondent has issued instructions to the effect that those students who appeared for 10+2 examination conducted by NIOS may be considered for admission in MBBS course. Moreover the association of Indian Universities by their communication dated 25.07.1991 has declared that the courses offered by NIOS are equivalent to those of other examination recognised by the Board for the purpose of higher studies in Indian Universities.

(iv) According to the petitioner, she is fully eligible to apply for MBBS course in Indian Universities and consequently she is entitled for issuance of eligibility certificate under NRI

quota. However, when the petitioner applied for issuance of such eligibility certificate with the third respondent on 27.04.2015, the third respondent did not process the same or passed any order. Therefore, on 13.08.2015 the petitioner submitted another representation to expedite the issuance of eligibility certificate to her. As there is no response to her representations by the respondents, the petitioner has come forward with this writ petition.

3. The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the writ petition. Furthermore, the learned counsel for the petitioner would contend that the issue relating to acceptance of certificates issued by NIOS for evaluating the eligibility of the students seeking admission in MBBS course has been considered by the Board of Governors in Super-session of Medical Council of India on 14.09.2012. As per the communication dated 14.09.2012, if the requirement of Graduate Medical Education Regulations regarding eligibility criteria for admission to MBBS course are fulfilled by the student appearing in 10+2 examination conducted by NIOS, they may be considered eligible for admission to MBBS course. By highlighting the above communication dated 14.09.2012 of the Medical Council of India, the learned counsel for the petitioner would submit that the petitioner underwent schooling in 10+2 format in Singapore besides she has obtained a certificate from NIOS. On the basis of the above, the third respondent is bound to issue eligibility certificate in her favour, however, there is total inaction on the part of the third respondent to consider such genuine claim of the petitioner.

4. The learned counsel for the petitioner brought to the notice of this Court the Medical Council of India Regulations on graduate medical education, 1997, amended upto February 2012. He has taken me to Clause 4 (2) (b) of Chapter II relating to admission, selection, migration and training which states as follows:-

"4 (2) He/She has passed qualifying examination as under:-

(a)

(b) The intermediate examination in science of an Indian University/Board or other recognised examining body with Physics, Chemistry and Biology/Bio-Technology which shall include a practical test in these subjects and also English as a compulsory subject.

5. Relying on the regulations of the first respondent mentioned above, the counsel for the petitioner would submit that even as per the above regulations, the petitioner is entitled for issuance of eligibility certificate in her favour. Therefore, the learned counsel for the petitioner therefore prayed this Court to issue a direction to the third respondent to issue eligibility certificate to the petitioner at an early date.

6. Per contra, the learned counsel appearing for the third respondent, relying on the counter affidavit of the third respondent, would contend that the petitioner has not completed

10+2 higher secondary course after pursuing the same for 12 years. As per the regulations of Medical Council of India coupled with the amendments made till February 2012, the last two years of study comprising of physics, chemistry, biology and mathematics is one of the requirements condition precedent for admission to MBBS course and this is also published in a notification dated 03.11.2010 in the government gazette. As far as the petitioner is concerned, according to the counsel for the third respondent, she has completed Advanced level of education in Singapore Cambridge GCE, with the following subjects such as (1) General Paper (2) Economics (3) Physics (4) Chemistry and (5) Mathematics. The petitioner has not undergone Biology as a paper in the above stream of education. According to the counsel for the third respondent, any candidate who has completed advanced level qualification in any foreign country has to necessarily obtain equivalency certificate from the Association of Indian Universities, New Delhi equating their qualification with that of the Central Board of Examinations/Board of Examination of the concerned State. Even though the petitioner has produced an equivalency certificate, it was only concerned with the five subjects completed by her in Singapore Cambridge GCE "O" Level examination and not biology. The learned counsel for the third respondent mainly relied on Clause 4 (2) (a) of the regulations on Graduate Medical Education, 1997 amended upto February 2012, which reads as follows:-

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 higher secondary examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology/Bio-technology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on Education;

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee

The above Regulation has been relied on by the learned counsel to contend that when the course or curriculum completed by the petitioner is not in the prescribed 10+2 pattern of education, she has to undergo a one year pre-professional training before admission to the medical course. Therefore, the learned counsel for the third respondent prayed for dismissal of the writ petition.

7. I heard the counsel for the petitioner as well as the learned standing counsel for the third respondent. I have carefully examined the materials placed. The petitioner seeks for admission in to professional course - MBBS with the fourth respondent college. The petitioner was asked to obtain an eligibility certificate from the third respondent as a condition precedent for such admission. The petitioner also approached the third respondent in this regard. On the basis of the

representation made by the petitioner, as the third respondent did not pass any orders, the petitioner has filed this writ petition. When the writ petition was taken up for hearing by this Court on 16.10.2015, this Court directed the first respondent to take a decision on the request made by the petitioner. Pursuant to such a direction issued by this Court, the first respondent has sought for a clarification from the Medical Council of India with respect to issuance of eligibility certificate in favour of the petitioner. The Medical Council of India, by a communication bearing No.MCI-34(III)/2015-Med/146560 dated 29.10.2015, addressed to the Registrar of Tamil Nadu Dr. MGR University has categorically stated that the petitioner has not fulfilled the criteria relating to two years of regular and continuous study as required under the Graduate Medical Education Regulations, 1997. For ready reference, the communication dated 29.10.2015, which is enclosed in page No.9 of the typed set of papers of the petitioner, is reproduced hereunder:-

"Kindly refer to your letter No.ACI(1)/28843/2015 dated 07.08.2015 on the subject noted above.

In this connection, this is to inform you that after perusal of your letter, it is observed that the candidate Ms. Sneha Manimurugan has completed her GCE from Singapore Cambridge without Biology in December 2013 and Biology alone from National Institute of Open Schooling, NOIDA, India in April 2014 and also passed Physics, Chemistry, Biology and English from National Institute of Open Schooling, NOIDA, India in October 2014. The Graduate Medical Education Regulations, 1997 requires two years of regular and continuous study of PCB/Bio-technology taken together and English with the stipulated percentage of marks. The criteria relating to two years of regular and continuous study is not fulfilled.

Therefore, the applicant is not entitled to pursue MBBS course based upon studying/passing Biology as additional subject from NIOS in April 2014 and thereafter again with PCB and English in October 2014."

8. As per this communication, the claim of the petitioner for issuance of eligibility certificate has been negated by the Medical Council of India by referring to the Graduate Medical Regulations, 1997.

9. Even on merits, as rightly pointed out by the counsel for the third respondent, even though the petitioner has produced an equivalency certificate, it was only concerned with the five subjects completed by her in Singapore Cambridge GCE "O" Level examination and not biology. Further, as per Clause 4 (2) (a) of the regulations on Graduate Medical Education, 1997 amended upto February 2012 when the course or curriculum completed by the petitioner is not in the prescribed 10+2 pattern of education, she has to undergo a one year pre-professional training before admission to the medical course. In the absence of such a pre-professional training prescribed under Clause 4 (2) of the

regulations on Graduate Medical Education, 1997, the petitioner is not entitled for issuance of a direction, as prayed for in this writ petition. Therefore, in the given facts and circumstances, I do not see any reason to issue a Mandamus as prayed for by the petitioner.

10. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary
Medical Council of India
Pocket-14 Sector, Dwaraka
Phase-1, New Delhi - 110 077
2. The Secretary
Department of Health & Family Welfare
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Fort St. George, Chennai - 600 009
3. The Academic Officer
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Guindy, Chennai - 600 032
4. The Dean
PSG Institute of Medical Sciences & Research
Off. Avinashi Road, Kalluri Nagar
Peelamedu, Coimbatore - 641 004

1 cc to M/s.P.Saravanan, Advocate, Sr. 10620
1 cc to Mr.V.P. Raman, Advocate, Sr. 10476

WP No. 30328 of 2015

UG (CO)
kk 23/2