

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.04.2016

Delivered on : 12.04.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.321 of 2016

Ms.Sneha Manimurugan Appellant/Petitioner

V.

- 1.The Secretary,
Medical Council of India,
Pocket-14, Sector, Dwarka,
Phase-1, New Delhi - 110077.
- 2.The Secretary,
Department of Health and 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 - 64. Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 18.02.2016 made in W.P.No.30328 of 2015. Petition presented under Article 226 of Constitution of India to issue a Writ of Mandamus directing the 3rd Respondent to issue a 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 sard academic year in the 4th respondent institution on the basis of eligibility certificate.

For Appellant : Mr.P.Saravanan
For 1st Respondent : Mr.V.P.Raman
For 2nd Respondent : Mr.P.S.Siva Shanmuga Sundaram
For 3rd Respondent : Mr.G.HariHara Arun Soma Sankar
For 4th Respondent : Mr.E.Manoharan
For M/s.A.Jenasenan

JUDGMENT

The Appellant/Petitioner has preferred the instant Writ Appeal as against the order dated 18.02.2016 in W.P.No.30328 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 18.02.2016 in W.P.No.30328 of 2015, had observed that the 1st Respondent/Medical Council of India, by a Communication in Ref.No. MCI-34(41)/2015-Med./146560 dated 29.10.2015 [for the letter in Ref.No.AC(1)/28843/2014-1 dated 07.08.2015 of the Registrar of the 3rd Respondent/University], had, inter alia, stated as follows:

'... 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'.

3.Added further, the Learned Single Judge, in the order of the Writ Petition, at paragraph 9, had opined as under:

"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 NRI Level examination and not biology. Further, as per Clause 4(2)(a) of the regulations on Graduate Medical Educaiton, 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."

and resultantly, dismissed the Writ Petition without costs.

4.Challenging the correctness, legality and validity of the order dated 18.02.2016 in W.P.No.30328 of 2015 passed by the Learned Single Judge, the Appellant/Writ Petitioner has filed the present Writ Appeal primarily contending that the Learned Single Judge, after accepting the Equivalency Certificate of five subjects completed by the Appellant/Petitioner in Signapore, came to a conclusion that the Appellant had not completed Biology as per the prescribed 10+ 2 pattern because of the fact that she had completed Biology in the National Institute of Open Schooling (hereinafter referred as 'NIOS').

5.According to the Learned Counsel for the Appellant, the Learned Single Judge took into consideration only the CBSE equivalent course completed by the Appellant in Singapore and had not given any value to the examinations passed by her in 'NIOS' in India.

6.The Learned Counsel for the Appellant forcefully contends that 'NIOS' is an autonomous organisation set up by the Ministry of Human Resource Development, Government of India conducts its Education Programmes through Distance Education Mode. It is further represented that the Government of India based on its resolution dated 14.09.1990 had issued a circular dated 11.12.2012 vesting 'NIOS' with authority to conduct and certify examinations for the Secondary levels.

7.The Learned Counsel for the Appellant projects a plea that the Association of Indian Universities through its Notification dated 25.07.1991 had intimated the Registrars of All Indian Universities its decision to grant equivalence to 'NIOS' courses with those of other examinations of recognised Boards for purposes of admission to higher courses of study at

Indian Universities.

8.The Learned Counsel for the Appellant brings it to the notice of this Court that the 1st Respondent/Medical Council of India through a letter dated 14.09.2012 addressed to the Director of NIOS had categorically stated that students appearing in the 10+2 examination conducted by the 'NIOS' will be considered eligible for admission to MBBS Course.

9.The real grievance of the Appellant is that after recognising/ vesting the necessary authority to 'NIOS' by the Ministry, Association of Universities and 'MCI', two years continuous study criteria cannot be insisted by the 1st and 3rd Respondents, inasmuch as the 'NIOS' is an 'Distance Study Education System' which prescribes only the number of contact classes to be attended before writing the exams. It does not prescribe any continuous study. Also that, if two years of continuous study criteria is insisted upon, then, no student, who had passed from 'NIOS', would become eligible to apply for the Medical Course.

10.The Learned Counsel for the Appellant draws the attention of this Court that the Appellant apart from passing Physics, Chemistry and English (CBSE equivalent) in Singapore had also passed the intermediate examination in Science viz., Physics, Chemistry, Biology (Theoretical and Practical) and also an English Exam conducted by 'NIOS' which is a recognised examining body (recognised by Human Resource Ministry, MCI and by Association of Indian universities).

11.The Learned Counsel for the Appellant submits that based on the representation made by the 1st Respondent/MCI through its letter dated 14.09.2012 addressed to the Director of NIOS, the Appellant/ Petitioner after passing the examination in English, Physics, Chemistry, Biology (Theory and Practical) conducted by NIOS has a 'Legitimate Expectation' to be admitted to the MBBS Course in India.

12.The Learned Counsel for the Appellant strenuously contends that Clause 4(2) of the MCI Regulations which deals with the eligibility criteria has various sub-clauses (a), (b), (c) and so on. Further, all these sub-clauses are independent to each other as they are separated from each other.

13.Continuing further, it is the stand of the Appellant that the Learned Single Judge in the order passed in the Writ Petition had only considered the sub-clause 4(2)(a) which was relied upon by the 1st and 3rd Respondents and on the basis of 'Note' under Clause 4(2)(a), the Learned Judge came to the conclusion that the Appellant to undergo a one year pre-professional training before admission to the medical course.

14.The case of the Appellant is that she is an overseas citizen of India and her father also an overseas citizen of India, had settled in Singapore. Further, she had studied Singapore Cambridge GCE Standard and passed "A" level examination in more than five subjects viz., English, Maths, Physics and Chemistry and few other subjects. She had completed her schooling after 12 years in December, 2013. As a matter of fact, the said qualification obtained by her from Singapore University is equivalent to Senior School Certificate of Central Board of Secondary Education in India. Moreover, she underwent a private course of study in Biology with other subjects for two years. Since the Appellant had desired to become a Doctor, she applied for MBBS course in the 4th Respondent/PSG Institute of Medical Sciences & Research, Coimbatore, which is affiliated to the 3rd Respondent/Dr.MGR Medical University, Chennai under NRI quota for the academic year 2014-2015. She was informed by the office of the 4th Respondent to obtain eligibility certificate from the 3rd Respondent/ University and when she approached them for eligibility certificate, she was informed by the University Office that biology subject was not one of the subjects as part of the regular curriculum underwent by her in Singapore and therefore, she was advised to take biology examination. Based on the advise, she joined the biology course in the National Institute of Open Schooling (NIOS) which is an autonomous institution established under Ministry of Human Resources Development, Government of India and came out successful in the written test during April 2014. Later, she had applied for the eligibility certificate. But, once again she was informed that in order to become eligible to join MBBS course in India, she ought to have taken a comprehensive course involving Physics, Chemistry, Biology and English in one stream and not Biology alone.

15.It comes to be known that the Appellant again joined the NIOS and cleared the exams in all the subjects as aforesaid with good percentage of marks during October Session 2014 and a certificate was issued by 'NIOS' to that effect during April 2015.

16.The unequivocal stand taken by the Appellant in the Writ Petition Affidavit is that the 1st Respondent/Medical Council of India had issued instructions certifying that students appearing 10 +2 examinations conducted by 'NIOS' may be considered to MBBS course and on that basis, the students from 'NIOS' were considered eligible in the past and admitted into MBBS course. Furthermore, the Association of Indian Universities by their communication dated 25.07.1991 had declared that the courses of 'NIOS' were equivalent to those of other examination of

recognised Boards for the purpose of admission to higher studies in Indian Universities. The Appellant on fulfilling the eligibility conditions in respect of NRI quota as prescribed by the University norms and regulations had applied for the issue of eligibility certificate before the 3rd Respondent through a representation dated 27.04.2015. Since there was no response, she submitted another representation on 13.08.2015 requesting for early issue of the eligibility certificate under NRI quota, as the admission to the MBBS course was in progress. Subsequently, she was approaching the office of the 3rd Respondent, but there was no response in this regard. As such, the Appellant had filed the Writ Petition praying for issuance of a Mandamus by this Court in directing the 3rd Respondent to issue eligibility certificate to her under NRI category for admission to MBBS course for the academic year 2015-2016. Further, she had prayed for passing of an order by this Court in issuing direction to admit her in the MBBS course for the said academic year in the 4th Respondent Institution on the basis of her eligibility.

17. In so far as the present case is concerned, it transpires that the Registrar of the 3rd Respondent/University had addressed a communication in Ref.No.ACI(1)/28843/2014-1 dated 07.08.2015 (citing the University's letter no. dated. 26.11.2014) to the 1st Respondent seeking clarification in respect of the MBBS Degree Course relating to Appellant, as to whether the candidate is eligible for admission to MBBS degree course under NRI quota for the year 2015-16 as per the conditions prescribed by the Medical Council of India and to clarify on the clause (b) Chapter II as the number of years of study has not been mentioned. The 1st Respondent, in turn, had addressed a reply to the Registrar of the 3rd Respondent/University, in Ref. No.MCI-34(41)/2015.Med./146560 dated 29.10.2015, inter alia, stating as under:

"... 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 Instt. of Open Schooling, NOIDA, India in April, 2014 and also passed Physics, Chemistry, Biology and English from National Instt. 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."

18. Apart from the above, even going by the Medical Council of India Regulations, 1997, the substituted clause 4(2) in terms of the notification published on 03.11.2010 in Gazette of India is to the effect that '4(2) He/She has passed qualifying examination as under:-

(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 candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges;'

Hence, the Appellant is to undergo a one year pre-professional training before admission to the medical course. In the instant case, the Appellant lacks such professional training.

19. Dealing with the plea of 'Legitimate Expectation', this Court aptly recollects and recalls the observations of Clive Lewis in Judicial Remedies in Public Law at page 97, which runs as under:

"Decisions affecting legitimate expectations- In the public law field, individuals may not have strictly enforceable rights but they may have legitimate expectations. Such expectations

may stem either from a promise or a representation made by a public body, or from a proviso practice of a public body. The promise of a hearing before a decision is taken may give rise to a legitimate expectation that a hearing will be given. A past practice of consulting before a decision is taken may give rise to an expectation of consultation before any future decision is taken. A promise to confer, or past practice of conferring a substantive benefit, may give rise to an expectation that the individual will be given a hearing before a decision is taken not to confer the benefit. The actual enjoyment of a benefit may create a legitimate expectation that the benefit will not be removed without the individual being given a hearing. On occasions, individuals seek to enforce the promise of expectation itself, by claiming that the substantive benefit be conferred. Decisions affecting such legitimate expectations are subject to judicial review."

20. Proceeded further, it is to be noted that legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue. If there is a change in policy or in public interest the position is altered by a rule or legislation, then, no question of 'Legitimate Expectation' would arise. Also that, no Legitimate Expectation can be cemented on unfounded impression. Suffice it for this Court to point out that the question of 'Legitimate Expectation' is to be decided not from the claimant/litigant's perceptions, but in larger public interest. No wonder, whether the expectation and the claim made by a litigant/party is legitimate or reasonable or genuine one, revolves on the facts and circumstances of a given case. In view of the above, the contra plea taken on behalf of the Appellant that she had a Legitimate Expectation to be admitted to the MBBS course in India is negatived.

21. In view of the foregoing detailed discussions, this Court, taking note of the entire conspectus of the facts of the present case and on balance, comes to an inevitable and irresistible conclusion that the relief sought for in the Writ Petition by the Appellant/Petitioner cannot be acceded to by this Court. Viewed in that perspective, the conclusion arrived

at by the Learned Single Judge in dismissing the Writ Petition is free from any flaw. Consequently, the Writ Appeal fails.

22.In the result, the Writ Appeal is dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Secretary,
Medical Council of India,
Pocket-14, Sector, Dwarka,
Phase-1, New Delhi - 110077.
- 2.The Secretary,
Department of Health and Family Welfare,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

+1 cc to Mr.P.Saravanan, Advocate, sr.22955
+1 cc to Mr.V.P.Ramesh, Advocate, sr.23033

W.A.No.321 of 2016

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kra 22.04.2016

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