

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.36316 of 2015

ORDER:

Vide the present petition, the petitioner seeks mandamus declaring the action of the second respondent in rejecting to issue Eligibility Certificate to the petitioner for Bachelor of Medicine and Bachelor of Surgery Course (MBBS Course) vide orders No.MCI-201(EC 10-0489)/2015-Eligi./133872, dated 10.09.2015, as illegal and without jurisdiction of law.

2. In the writ affidavit, it is stated that the petitioner's date of birth is 13.9.1992 as per his SSC certificate. He attended SSC final examination in the month of March 2005, when his age was 13 years. As the minimum age required to attend SSC examination is 15 years, and as he was falling short of age by 2 years and 13 days, he requested the authorities and the Government of Andhra Pradesh Education (SE-Exams) Department vide Memo dated 18.11.2004, permitted the petitioner to appear for SSC examination in March 2005 as a Private candidate. Thereafter, the Board of Secondary Education, Andhra Pradesh had issued Secondary School Certificate vide No.DD 755040 (PC/15/ 14138/ 055056/7), dated 30.04.2005. After completion of his SSC, he joined in Intermediate Course, Bi.P.C Group in Bharathi Junior College, Guntur and he completed his Intermediate and passed with B-Grade. Accordingly, the Board of Intermediate Education, A.P., has issued Intermediate Pass Certificate-cum-Memorandum of Marks vide Sl.No.G094352, dated 24.4.2007.

It is further stated that after completion of his intermediate, he appeared for EAMCET for getting admission in MBBS course in

the year 2007, however, he could not succeed. Accordingly, he got admission in a Foreign University i.e., International University of the Health Sciences, School of Medicine, Brannigan House, Basseterre, St. Christopher and Nevis, West Indies and the Foreign University has given admission to the petitioner in its Branch attached college at Guntur, A.P. State i.e., Saumya Hospital & College, Guntur for the year 2007-08. He completed his MBBS which is of 5 ½ years duration and passed out in the month of February 2013. The Foreign University has obtained recognition from the Medical Council of India and has been taking admissions in India.

It is further stated that as per Section 13 of the Indian Medical Council Act 1956 (for short "the Act"), every MBBS student must have to obtain Eligibility Certificate from the second respondent i.e., Medical Council of India. Accordingly, he had given a representation dated 18.06.2007 and requested to give permission to join MBBS course under age as a exception student. To this effect, the petitioner enclosed all his certificates including the Age relaxation permission order for SSC issued by the Government of Andhra Pradesh.

The petitioner also submitted an application on 28.04.2010 to the second respondent for issue of eligibility certificate, which is mandatory under Section 13 (4B) of the Act. After submitting the application to the second respondent, the petitioner was under the impression that second respondent will issue eligibility certificate before his completion of MBBS course. Accordingly, he had continued his MBBS course and completed also.

The petitioner had finally made a representation to the second respondent on 20.08.2010. However, there was no reply till 15.05.2015. At last, on 15.05.2015, the second respondent had issued a letter to the petitioner stating that after scrutiny of the application and attached documents, it has been noted that the petitioner had not mentioned e-mail address and Mobile number in the application form, which is necessary for issuance of eligibility certificate. Accordingly, on 27.5.2015, the petitioner has submitted the same as sought by the respondent.

However, vide impugned letter dated 10.9.2015, the petitioner has received communication from the respondent that as per the regulation of the Council, the petitioner has not completed the age of 17 years on or before 31st December of the year of admission, and therefore, the petitioner is not eligible to receive eligibility certificate.

Learned counsel for the petitioner submits that a similar issue came up for consideration before a Division Bench of Allahabad High Court reported in **Ankit Chaturvedi vs. Union of India and others**¹ wherein, *the petitioner therein was admitted to MBBS course in Universal College of Medical Sciences, Nepal in the academic year 2004-05. He did not apply and obtain the eligibility certificate from the Medical Council of India before seeking admission and pursuing his studies. An application was made by him on 16.09.2009 to the Medical Council of India for eligibility certificate after a period of four years after he was admitted to the Medical College in Nepal. But the application was rejected by the*

¹ 2014 Law Suit(All) 814

Medical Council of India on the ground that he had not completed 17 years of age on or before 31st December of the year of his admission.

The Division Bench of High Court of Allahabad while relying upon other cases, observed as under:

“In the cases of Ms. Bhagwasri Goli and other similar placed cases considered by the Board of governors in its meeting dated 27.09.2012, provisional certificate was granted despite the fact that she had not completed 17 years of age at the time of admission in MBBS Course. The explanation was that she had applied and erroneously issued eligibility certificate. Her case and the other cases, in which provisional registration was granted, are not similar to the case of the appellant (therein). The resolution of the board of Governors of Medical Council of India in its meeting dated 27.9.2012 in the matter of Ms Bhagyasri Goli is quoted as below:-

“Consideration for grant of Provisional Registration to Ms. Bhagyasri goli and other similar cases admitted in MBBS course at age below 17 years u/s 25(1) of the IMC Act, 1956 – Regarding.

The Board of Governors decided that the Provisional Certificate may be granted to Ms. Bhagyasri Golia and other similarly placed cases wherein provisional Registration and/or Eligibility Certificate was issued by the Medical Council of India to the candidates who did not complete the age of 17 years at the time of admission in MBBS course. The board of governors further decided that this will not be considered as precedence in future and the Eligibility Section should be careful in issuing Eligibility Certificate to the

candidates and ensure that all requirements are fulfilled by the candidate (s) as per provisions of the Graduate Medical Education Regulations, 1997. The Board of Governors further decided that candidates aspiring to pursue MBBS course from Medical College/university abroad be informed that it is necessary to obtain Eligibility Certificate before proceeding for admission and they must fulfil all requirements in terms of the eligibility criteria.”

In para-18, it is opined that there was no requirement as prescribed under clause 4(1) of the Graduate Medical Education Regulations, 1997 for completing 17 years of age before applying and taking admission.

Learned counsel for the petitioner submitted that the petitioner is now going to complete 24 years of age in the month of September and he is now eligible for issuance of eligibility certificate, which does not give him the licence to practice. He has appeared for screening test, and if he gets admission, only thereafter, he can pursue his PG course and practice in India.

Learned Standing counsel for the respondents filed counter-affidavit and contends that the present petition is contrary to the statutory, mandatory and binding regulations framed by MCI with the prior approval of the Government of India. The respondent-MCI, which is a statutory authority constituted by the Central Government under an Act of Parliament, namely, Indian Medical Council Act, 1956.

The duty of the MCI is to maintain the highest standard of medical education and, as such, the Supreme Court in case of State of Kerala vs T.P.Roshana² had observed as under:

“...the Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses...”

Learned Standing Counsel further submits that the Regulations of Medical Council of India have binding effect as has been decided by the Apex court. Accordingly, the case of the petitioner has been rejected on the ground that he had not applied for eligibility certificate before entering education into MBBS course.

Heard learned counsel for the parties.

It is not in dispute that in certain cases, the Medical Council of India has granted exemption to the applicants for grant of eligibility certificate when they had taken admission at the age of less than 17 years. Accordingly, the High Court of Allahabad directed the respondent that the required consideration shall be made by the Board of Governors of Medical Council of India, preferably, within a period of three months.

In another judgment of Delhi High court reported in batch of petitions, WP(C) No.18600 of 2005 in case of **Jishalakshi Embrandiri and others vs. Medical Council of India and others**,

²(1979) SCC 580

wherein, on a similar circumstances vide its judgment dated 05.04.2006 allowed the petition and directed the respondents to issue eligibility certificate. The cases mentioned above attained the finality as not challenged by the respondents.

This court put a specific query to the learned counsel for the respondents that in case of Ankit Chaudary (supra) the petition therein was allowed and thereafter Jishalakshi Embrandiri (supra), as noted above was also allowed. Moreover, in the other case as discussed above, Medical Council of India had relaxed the age and accordingly, issued the eligibility certificate.

The guidelines/ regulations are of the year 1997. During that period, the Mobile phones started coming to our country. The Internet and other advanced electrical gadgets were not in active force. We are moving towards e-courts, paperless courts and appreciating any of the citizen of this country, who does some out of the routine or anti-stream. Even in Sports, 16 years 17 years boys and girls are participating and bagging medals for their respective countries. In that case, we appreciate and celebrate that at such a younger age, he/she has attained this much of position. Now we are moving through the advancement and one to move with the supersonic speed. In such a situation, age of 17 years and that his eligibility certificate, I feel has no meaning.

Though I do not dispute the Regulations of the Medical Council of India, which have been appreciated by the Supreme Court of India not in one case but in many cases, but as far as the age criteria is concerned, the Government of A.P allowed the petitioner to appear in SSC examinations. In Intermediate also the petitioner was allowed to appear and thereafter he was also given

admission in MBBS and allowed to complete his courses. At this stage when there is a competition throughout the world and the Foreign Medical Sciences are allowed in this county to operate the colleges, impart the education to the Indian citizens and they have no objection if the candidate appears at any age. However, age criteria fixed by the Medical Council of India is not justified.

In view of the opinion rendered in this petition, I hereby suggest the Central Government and Medical Council of India to revisit the regulations and say good bye to minimum age i.e., 17 years, which is made compulsory before entering into MBBS course.

For the aforesaid purpose, the Registry of this Court is directed to send a copy of the same to the Secretary, Public Health System Centers, Government of India, so that the talented students may not face the difficulty as faced by the petitioner and others discussed in this petition.

In view of the above discussion and the facts and circumstances of the present case, I hereby direct the second respondent-Medical Council of India to issue eligibility certificate to the petitioner within two (02) weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date :22-08-2016
Gvl

