

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 11819 of 2017

ORDER:

1) The present writ petition came to be filed with the following relief:

“issuance of writ of mandamus to declare the action of the second respondent in rejecting to issue eligibility certificate to the petitioner’s daughter Ms. Janga Shirisha for Bachelor of Medicine and Bachelor of Surgery Course (MBBS) vide orders Letter No.MCI-201 (EC16-14833)/ 2016-Eligi./ 15433 dated 26.12.2016 as illegal, without jurisdiction, violation of principles of natural justice and Articles 14 and 21 of the Constitution of India and also violation of the provisions of the Indian Medical Council Act, 1956; and consequently direct respondent Nos.2 and 3 to issue Eligibility Certificate to the petitioner’s daughter for MBBS degree for the purpose of attending screening test to be conducted by respondent No.4.”

2) The averments in the affidavit filed in support of the writ petition would show that the daughter of the petitioner by name Janga Srisha (hereinafter referred to as “the student”) was born on 04.03.2000. She attended her SSC final examination in the month of March, 2014, though the minimum age required to complete the 10th class was 15 years. It is said that the concerned authorities have permitted the student to attend the SSC examination though her age was less. After completing her SSC, she joined intermediate course in Bi.P.C. In the month of March, 2016 she completed her intermediate examination, consequently

pass certificate and marks memo were issued to her. Though she was less than the required age for writing the intermediate examination, the authorities gave permission to write the intermediate examination as well. After the completion of intermediate examination, she took admission in M.B.B.S Course at General Medicine faculty of Astana Medical University (Kazakhstan) for the year 2016-2017 batch. She joined in the said course and completed her first year course in the said university. As required under Section 13 of the Indian Medical Council Act, 1956 (for short "the Act"), the student gave a representation seeking permission to join medical course on relaxation of her age. She enclosed the exemptions granted by the State Government, permitting her to appear for SSC and Intermediate examination. The said application was said to have been submitted on 13.10.2016. On 26.12.2016 ie. after joining in the medical course, the respondent Nos.2 and 3 issued the impugned letter, wherein her request for issuance of eligibility certificate was rejected on the ground that at the time of her joining the MBBS Course, she was less than 17 years. The same is subject matter of challenge in the present writ petition.

3) A counter came to be filed stating that as per Section 13 (4) (A) and (B) of the Act, the student has to obtain the eligibility certificate from the Medical Council of India and then proceed to take admission in a foreign university. It is urged that in the event of student not doing so, she cannot be permitted to appear in the screening test after completion of the course. As per

Regulation 4 (2) of the Screening Test Regulations, 2002, no person shall be allowed to appear in the screening test, unless the said person has obtained an eligibility certificate from the Medical Council of India. It is further stated that as per Regulation 4 (1) of Medical Council of India, a candidate is eligible to be admitted into MBBS Course only after completing 17 years of age on or before 31st December of the said year. Since the student failed to comply with the conditions/ norms prescribed under the Rules and Regulations, granting of eligibility certificate would not arise.

4) Learned counsel for the petitioner would submit that similar issue came up for consideration in W.P.No.36316 of 2015 and also before the Division Bench of Allahabad High Court reported in Ankit Chaturvedi vs. Union of India and others¹. In Ankit Chaturvedi Case (1 supra) the petitioner therein was admitted to MBBS course in Universal College of Medical Sciences, Nepal in the academic year 2004-05. Without obtaining the eligibility certificate from the Medical Council of India, he pursued his studies. An application was made by him on 16.09.2009, for issuance of eligibility certificate, four years after he was admitted in a Medical College at Nepal. But the said application was rejected by the 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.

¹ 2014 Law Suit (all) 814

5) 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.”

6) On the other hand Sri Vivek Chandra Sekhar, learned Standing Counsel for respondent No.2 would submit that the judgment in W.P.No.36316 of 2015 does not apply to the case on hand. According to him, in the said case, the petitioner made an application to the Medical Council of India seeking issuance of eligibility certificate though she was less than 17 years on 28.04.2010 but the order rejecting his request came to be issued only on 15.05.2015 ie. after completion of the course. In view of the peculiar circumstances of the case, the Court felt it appropriate to direct the Medical Council of India to issue an eligibility certificate to the petitioner therein. He places reliance of two judgments of Division Bench of this Court in W.P.No.17162 of 2009 and W.P.No.31337 of 2016 and Batch.

7) Admittedly, in the instant case, the student was born on 04.03.2000 and she sought for admission in the medical course, in a foreign university, in the year 2016. As per her date of birth, she would have completed 16 years of age as on 31.12.2016, thereby falling short in age, as prescribed by the Medical Council of India for admission into the Medical Course.

8) In W.P.No.17162 of 2009, relied upon by the learned counsel for the respondent, this Court dealt with a case where the petitioner's date of birth fell short by two months and 23 days so as to complete 17 years by 31.12.2009. The petitioner therein was informed, at the time of counseling for admission into

medical stream stating that he is not eligible for admission in view of shortage in age. Then the petitioner moved this Court by way of filing W.P.No.14725 of 2009 for correction of age, which was dismissed, leaving it open to the petitioner to approach the authorities concerned. Thereafter, he approached the Government for relaxation of age which was accorded vide G.O.Rt.No.545, Higher Education (EC-2) Department, dated 23.07.2009, condoning the shortfall of the age in order to secure admission in the first year medical stream. Though the Government issued G.O.Rt. but respondent Nos.3 and 4 therein refused to permit the petitioner to attend the counseling. Challenging the same, W.P.No.14965 of 2009 came to be filed which is still pending. Then W.P.No.17162 of 2009 was filed seeking a direction to respondent Nos.3 to 5 therein, to follow G.O.Rt.No.545 dated 23.07.2009 issued by the Government. After considering the various judgments of the Apex Court, the request of the petitioner came to be rejected holding that there is a rational for fixing 17 years of age, for admission into medical course. The Court came down upon Government for relaxing the age in courses of this nature, when their source of power, remains untraced.

9) Similarly in W.P.No.31337 of 2016 and Batch this Court was dealing with similar issue, wherein the petitioners therein, who were less than 17 years of age were not allowed to attend the counselling. Relying upon the judgment of this Court in

W.P.No.17162 of 2009 the writ petitions were dismissed.

However, the Bench observed as under:

“ But hard cases cannot make bad law. Therefore, in view of the decision in Master Alli Sai Deepak v. Government of Andhra Pradesh (W.P.No.17162 of 2009) (supra), these writ petitions are dismissed. But before parting, we would like to record our concern that the Medical Council of India (MCI) should take a call on such cases, as cases of persons whose age falls short by a few days, cannot really be considered as under-aged. The concept of considering a person as under- aged, may apply to persons who could not have completed SSLC at a particular time or who could not have completed Intermediate at a particular time and it cannot be applied to cases where the candidates have broadly entered into the required age but had not completed the same due to the shortage of a few days. The MCI may have to look at the concern of such candidates and address itself to the problems.”

10) In both the cases, the students sought permission to attend the counselling, as their age was less than 17 years at the time of counselling. In one case though the Government gave relaxation to the petitioner therein, which was *set aside* on the ground that the Government has no power to relax the age limit having regard to the various aspects referred to in the said judgment. Following the judgment in W.P.No.17162 of 2009, another Division Bench in a batch of cases, rejected the case of the petitioners though one of the petitioners therein fell short by 3 days. It is to be noted here that in the above two cases, the students were seeking admission into Medical Colleges in India, wherein there is a restriction with regard to age while taking admission into first year MBBS Course. In case on hand, the issue relates to admission

of student in a foreign university. It appears that no age limit is prescribed for admission to the said course, in the said university.

11) Though the learned counsel for the second respondent would contend that, as there was a delay of five years in considering the application of the petitioner in W.P.No.36316 of 2015, the Court ordered issuance of eligibility certificate. Such a finding does not find place in W.P.No.36316 of 2015. The court went into merits of the case and relying upon the judgment of the Delhi High Court and also Allahabad High Court, ordered issuance of eligibility certificate. It was also a case where age-relaxation to write 10th and intermediate examinations were given by the Government, because of which, the petitioner could complete the intermediate course well before the age limit prescribed for completing the same. Having regard to the age in which we are moving more so because of competitiveness in the field, the learned Single Judge ordered issuance of eligibility certificate.

12) Situation on hand is exactly identical to the case referred to above. Even in the instant case, the petitioner joined MBBS course in a Foreign University and completed 1st year of the said course. The only difference being that the issue came up for consideration, after completion of course in the judgment referred to above, whereas in the present case the issue has come up after completion of the first year of the course. Apart from that it is also to be noted here that the certificate which is sought to be given by the Indian Medical Council relates to the

assessment of the student by way of screening test after completion of MBBS course. Since the case on hand is identical to the order passed by a learned Single Judge of this Court in W.P.No.36316 of 2015, this Court is of the view that a direction can be given to the authorities to issue the eligibility certificate.

13) Accordingly, the writ petition is allowed giving the direction referred to above. There shall be no order as to costs.

14) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

23.08.2017
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JUSTICE C. PRAVEEN KUMAR

