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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2976/2015**

DR. SHEIKH BILAL BASHIR

..... Petitioner

Through Mr Ravi Kant Chadha, Senior Advocate
with Mr Vijay Kumar Singh, Advocate.

versus

DELHI MEDICAL COUNCIL & ANR.

..... Respondents

Through Mr Praveen Khattar, Advocate for DMC
with Sh L.D.S. Uppal, Asstt. Secretary, DMC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.10.2017

VIBHU BAKHRU, J

CM 30615/2017

1. The present application (CM No. 30615/2017) has been filed, *inter alia*, praying that the arguments be heard and the petition be disposed of expeditiously. For the reasons stated in the application, the same is allowed and with the consent of the parties, the petition (W.P.(C) 2976/2015) is taken up for hearing.

W.P.(C) 2976/2015

2. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 16.02.2015 issued by the Delhi Medical Council (DMC) rejecting the petitioner's representation and holding that the

petitioner has no right to registration as a medical practitioner as he had not cleared his 12th standard examination.

3. The petitioner was a student of Government Higher Secondary School, Wahtoor, Budgam, Jammu & Kashmir and had appeared in his 12th standard examination conducted by Jammu and Kashmir, State Board of School Education in the year 1993. However, the examinations were cancelled on the ground of complaints received by the said Education Board alleging that there was mass copying at the Centre where the petitioner had taken his exam. The petitioner states that he had obtained his first division in his class 10th examination and had also cleared class 11th standard examination; however, he did not appear for re-examination for the 12th standard.

4. The petitioner states that he could not continue his studies in the state of Jammu and Kashmir due to insurgencies and, therefore, had left the State to pursue medical studies in former USSR. The petitioner thereafter took admission for pursuing MD Physician Course in Tajik Abuali Ibn Sino State Medical University in September, 1994. It is stated that after undergoing the said course of almost six years, the petitioner was awarded the MD Physician's Degree on 19.06.2010.

5. It is not disputed that the Tajik Abuali Ibn Sino State Medical University is recognized under the Medical Council Act, 1956. The petitioner returned to India and interned with Government Medical College and Hospital, Jammu from May, 2002 to June, 2003. After completion of his internship, the petitioner left for Riyadh, Saudi Arabia and worked as a resident Doctor from August, 2005 till April, 2013.

6. The petitioner returned to India in 2013 and undertook the Screening

Test Examination for Foreign Medical Graduates conducted by the National Board of Examinations as per the Screening Test Regulations, 2002, held in June, 2014. The results of the said screening test were declared on 05.08.2014.

7. The petitioner states that thereafter he approached DMC and submitted his application for the purposes of registration as a medical doctor. However, the DMC has refused to accept the petitioner's application on the ground that the petitioner had not qualified in the 10 + 2 examination and was thus ineligible for registration.

8. Mr Ravi Kant Chadha, Learned Senior Counsel appearing for the petitioner relied upon the decision of the Supreme Court in ***Medical Council of India v. Indian Doctors from Russia Welfare Associations : (2002) 3 SCC 696*** : decision of the Division Bench of this Court in ***Shailesh Kumar Jha v. Medical Council of India : 2013 VI AD (DELHI) 341***; the decision of the Jammu and Kashmir High Court in ***Syed Bilal Ahamd Razvi v. Union of India & Ors : AIR 2012 J&K 106***; and decision in ***Rohit Naresh Agarwal v. Union of India and Ors : 2013 (204) DLT 401*** in support of his contentions that in terms of the guidelines approved by the Supreme Court, all students who had taken admission abroad prior to 15.02.2002 would be allowed to appear in the screening test even if they were ineligible to meet the admission norms set down by Medical Council of India (MCI) for joining undergraduate medical courses.

9. Mr Praveen Khattar, learned counsel appearing for the DMC countered the submission made on behalf of the petitioner and contended that clearing 10 + 2 examination was the essential condition for undergoing higher studies and since the petitioner had failed to clear his 12th standard

examination, the petitioner could not be enrolled as a medical practitioner.

10. I have heard the learned counsel for the parties.

11. In the year 1981, Government of India had requested MCI to consider grant of recognition to medical courses being conducted by medical colleges located in the erstwhile States of USSR. These courses were for typical span of six years which included one year of language training. Subsequently, the Government of India granted recognition to undergraduate medical courses being conducted by certain specified institutions in erstwhile USSR and the same were included in the second schedule to the Indian Medical Council Act, 1956 (hereafter 'the Act').

12. After the disintegration of USSR, the Government of India received certain reports that private agencies were sponsoring medical students from India to undertake courses in CIS countries for commercial benefit. The Government of India sought views of the MCI in regard to the reports received from Indian Embassies in Moscow and Almaty to the aforesaid effect. On 1.11.1994, MCI communicated its recommendation to derecognize all medical degrees from institutions located in erstwhile USSR. Thereafter, in March 1995, the Government of India also issued advertisements informing the public that the Government of India had not authorized any private agency to sponsor students for admission in medical colleges and all students securing admissions in Russia and other CIS countries would do so at their own risk.

13. Subsequently, reports were also received that there was a decline in the academic standards of medical institutions in Russia and other CIS States. MCI also found that many students who were not eligible to secure admission in undergraduate medical degree courses in India were being

granted admission to medical colleges in Russia and other CIS Countries.

14. On 17.09.1997, the Executive Committee of MCI took a decision to not enter the names of students who had undergone a course in Russia and other CIS countries on the medical register, if they were otherwise ineligible for securing admission to an undergraduate medical course in India.

15. In view of the decision of MCI to not enrol the names of students who had completed the medical courses in Russia and other CIS countries, several petitions came to be filed in different High Courts by students who were denied registration by MCI. This Court had allowed certain writ petitions and the appeals preferred against the same were rejected by the Division Bench of this Court. The Allahabad High Court also granted certain interim orders which were confirmed. The MCI carried these matters in appeal to the Supreme Court which were disposed of by the Supreme Court by its decision in ***Medical Council of India v. Indian Doctors from Russia Welfare Associations & Ors.*** (*supra*). One of the problems which was subject matter of appeal before the Supreme Court was with regard to students who had secured admissions in medical colleges; although they were ineligible to secure such admissions in India on account of their securing less than 50% aggregate marks in their higher secondary examination (10 + 2) or not having biology as a subject in their course. Many of such students had proceeded outside India and taken admission overseas.

16. The issues raised before the Supreme Court were addressed by bringing about legislative changes, Section 13 of the Act was amended by virtue of the Indian Medical Council (Amendment) Act, 2001 by introducing sub-sections (4A) and (4B) in Section 13 of the Act which provided for a

screening test and an eligibility certificate. Clause (ma) was also introduced in Section 33 of the Act to specifically empower the MCI to frame regulations with the previous sanction of the Central Government for conducting screening test and for issuing eligibility certificate under Section 13 (4A) (4B) of the Act.

17. For the period prior to 15.03.2001, the Supreme Court, in exercise of their powers under Article 142 of the Constitution of India, approved the guidelines framed by MCI. The said guidelines are set out below:-

"6. In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15-3-2001, the following guidelines are placed before this Court by the Government of India:

(A) The case of all persons who applied for registration to MCI prior to 15-3-2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:

(i) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in a recognised institution plus the internship, would be seven years, which is the requirement even otherwise.

(ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes

recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.

(B) All students who have taken admission abroad prior to 15-3-2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the screening test even if they also come in the categories of circumstances contained in (A)(ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15-3-2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15-3-2002. From 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.

(C) The categories of students not covered in (A)(i) and (ii) above and whose entire period of study has been in a medical college not recognised by MCI, will be allowed to appear in the screening test for the purpose of their registration provided they fulfil all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be a qualification recognised for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling the minimum eligibility qualification laid down by MCI for taking admission in an undergraduate medical course in India. They shall not be entitled to any relaxation."

18. The course of events that led to framing of the aforesaid guidelines and amending the Act, are narrated in *Rohit Naresh Agarwal v. Union of*

India and Ors. (*supra*) and for the sake of brevity, the same are not being repeated.

19. In the present case, the petitioner had completed his medical degree course prior to 15.03.2001 and, therefore, indisputably the aforesaid guidelines are applicable in the case of the petitioner.

20. In terms of the aforesaid guidelines, all persons who had completed their degree course prior to 15.03.2001 and had applied for registration with MCI prior to the said date would be treated as eligible for registration even though they did not meet the minimum admission norms of MCI for joining undergraduate medical courses.

21. However, all students who had taken admission abroad prior to 15.03.2002 were required to qualify the screening test for their registration as a medical practitioner, even if they did not meet the minimum admission norms for joining undergraduate medical courses.

22. Undisputedly, the said guidelines are binding as the same were approved by the Supreme Court and the court had passed directions for the same to be implemented. In terms of the said guidelines, the petitioner would be entitled for being enrolled as a medical practitioner if he had applied for such registration prior to 15.03.2001 notwithstanding that he did not meet the minimum admission norms of MCI. However, since the petitioner had not applied for registration prior to 15.03.2001, the petitioner would necessarily have to clear the screening test; which he has done. Since the petitioner had taken admission prior to 15.03.2002, the petitioner would also be entitled to the relaxation with regard to the minimum admission norms for joining undergraduate medical courses. Thus, notwithstanding that the petitioner was ineligible to join an undergraduate medical course on

account of not clearing his 10+2 examination, nonetheless, he would be entitled to be enrolled on the Medical Register on completion of his medical course from a recognised university and on successfully clearing the screening test.

23. This is also the view expressed by the High Court of Jammu & Kashmir at Srinagar in *Syed Bilal Ahamd Razvi* (*supra*). The aforesaid decision is also mentioned by a Division Bench of this Court in *Shailesh Kumar Jha v. Medical Council of India* (*supra*).

24. For the reasons stated above, the petition is allowed. The communication dated 16.02.2015, which is impugned in the present petition is set aside. The petitioner may apply for registration within a period of four weeks as per the procedure prescribed. If the petitioner does so, his application will be considered by DMC in accordance with law, notwithstanding, that the petitioner has not complied with the minimum eligibility norms for being admitted to the undergraduate medical course.

VIBHU BAKHRU, J

OCTOBER 16, 2017

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