

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

WP.No.22202 of 2017
and WMP.No.23227 of 2017

Dr.S.Ashwinkumar

...Petitioner

Vs.

1. The Secretary to Government,
Ministry of Human Resource & Development Department,
Shastri Bhawan, New Delhi.
2. Ministry of Health & Family Welfare,
Rep. by its Nodal Officer,
Chennai Centre,
A-2-A, Rajaji Bhavan, C.G.O. Complex,
Besant Nagar, Chennai - 600 090.
3. Medical Council of India,
Rep. by its Chairman,
Sector 8, Dwaraka Phase-I,
New Delhi-110077.
4. The President,
Travancore - Cochin Council of Modern Medicine,
Combined Council Building,
Red Cross Road,
Thiruvananthapuram - 695 035.
5. The Registrar,
Kerala University of Health Sciences (KUHS),
Medical College, P.O., Thrissur, Kerala 680596.
6. The Dean,
Government of Medical College,
Gandhi Nagar Kottayam,
Kerala State - 686 008.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the respondents authorities to register the post graduate MD(RD) degree qualification of the petitioner in the Indian Medical Register as per the provisions of Indian Medical

Council Act, 1956, within a time to be stipulated by this Court.

For Petitioner : Mr.S.Thanka Sivan

For Respondents : Mr.S.Sathish Rajan, for RR1 & 2
Mr.V.P.Raman, for R3
Mr.A.Nister Hakeen, for R5
No Appearance, RR4 & 6

ORDER

The petitioner has filed this petition for issuance of Writ of Mandamus, directing the respondent authorities to register the post graduate MD(RD) degree qualification of the petitioner in the Indian Medical Register as per the provisions of Indian Medical Council Act, 1956, within a time to be stipulated by this Court.

2. The petitioner is a Post Graduate Medical Doctor having Master Degree in Radio Diagnosis Course. The petitioner completed MBBS course during the year 2010 and appeared for the All India Medical Entrance Examination for the Post Graduate Course conducted by the respondents 1 and 2 through AIIMS. The petitioner succeeded in the examination and obtained 20th rank in the Scheduled Caste Category and his overall General All India rank is 1180. After publication of the results, the petitioner attended counselling in the National Institute of Siddha Medicine, Tambaram, Chennai. The petitioner was allotted MD (Radio Diagnosis) seat originally in Indira Gandhi Medical College, Shimla and subsequently, took allotment in the sixth respondent College in Kerala. The petitioner completed the Post Graduate Master Degree during 2011-2014 and thereafter, served as Senior Resident for a period of one year in the sixth respondent College from July 2014 to June 2015.

3. When the petitioner joined the said course in the sixth respondent College, it was in the list of permitted Colleges published by the Medical Council of India and was affiliated to the fifth respondent University and the recognition and affiliation were available till 2014. However, during the petitioner's final year examination, in 2014, the third respondent-Medical Council of India, conducted an inspection in the sixth respondent College and found that the sixth respondent College failed to comply with the requirements of Medical Council of India for continuation of recognition insofar as MD (Radio Diagnosis) is concerned.

4. After completion of Post Graduate in MD (Radio Diagnosis) Course by the petitioner, the fifth respondent University

granted the Degree Certificate dated 21.03.2015 and the sixth respondent granted the Course completion Certificate and Conduct Certificate on 07.07.2015. However, when the petitioner approached the fifth respondent for obtaining mandatory registration of Post Graduate as per the provisions of the Indian Medical Council Act, the fifth respondent refused to register the petitioner's name by stating that the sixth respondent College was not having recognition from the third respondent from the academic year 2014 insofar as MD (Radio Diagnosis) is concerned.

5. Despite the petitioner approached the respondents 3 and 4 for registration, no action was taken. Hence, the petitioner made a representation dated 01.07.2017 to the respondents 1 to 5, which was acknowledged by them, to register the petitioner's Post Graduation Degree Course under the Indian Medical Council Act within the fourth respondent. But no action was taken by the respondents, hence, the present writ petition is filed.

6. The learned counsel for the petitioner relied upon the Division Bench of this Court in the case of the President, Medical Council of India and others vs. M.Elavarasi in Writ Appeals No.263 of 2016, etc., batch of cases dated 11.08.2017, wherein it has been held as follows:

"26. In the above backdrop, when we examine the views expressed by the learned Single Judge in the impugned orders, there is no exception that is needed to be drawn thereto, for, the students pursued the Post Graduate education in an affiliated medical college only after that college was granted LoP for that particular Post Graduate course and underwent three year training course therein, have successfully completed the study or the course or training and have appeared for the examinations conducted by the third respondent university, which has been authorized by the State Enactment to conduct such examinations and confer degrees on successful candidates. Therefore, the provisional pass certificate issued by the third respondent university is, in no manner, defective. If we may add, in spite of infrastructural and institutional defects said to have been noticed by the MCI, in so far as the fourth respondent medical college, still the students could make the grade by competing with their peers, who have prosecuted the same course from other medical institutions in the State where there are no such deficiencies. They have cleared the examination when they are judged in this backdrop by a common yardstick thus proving that instructional and infrastructural deficiencies found out by the MCI have not come in their way at all and

their study and performance at the university examinations is not greatly impacted.

27. However, we are pained to notice that without rectifying or remedying the deficiencies pointed out by the Inspecting Teams of the MCI constituted under Section 17 of the Act, the medical institutions are allowed to go ahead and permit their students to complete the course of study. The MCI is required to act in time and not to wait till the very last minute when the students would be left with very little time or chance to enjoy the benefits by securing compliance with the deficiencies. The students cannot be subjected to the humiliating experience of waiting in the wings for years together. The various measures and options softly followed by the MCI, if they are not producing desired results, perhaps time has come to evolve a legal principle and fasten accountability on the medical college/institution concerned. The power to do so is clearly available both under Sections 17 and 19 of the Act.

28. Whenever any medical institution allows the students to complete their education without fully rectifying or remedying the deficiencies pointed out by the Committee of Inspectors appointed by the MCI under Section 17 or the Visitors report gathered under Section 18, such medical institutions shall be imposed compensatory costs, so that if not for fear of God, they would comply with the requirements prescribed by the MCI faithfully for fear of losing money. We consider that it would be appropriate to levy compensatory costs at the rate of Rs.1,00,000/- (Rupees one lakh only) for every Under Graduate student, who has been allowed to complete the course without fully remedying and rectifying all the infrastructural and instructional deficiencies pointed out by the MCI. Similarly, a minimum of Rs.2,00,000/- (Rupees two lakhs only) shall be imposed as compensatory costs for every student, who has been allowed to complete the Post Graduate course without remedying and rectifying the defects pointed out by the Team of Inspectors of the MCI. The State Government, through its Director of Medical Education, shall recover, on annual basis, the compensatory costs to be imposed by the MCI from each defaulting medical college/institution. Later on, the Director of Medical Education shall disburse the costs so recovered to each of such students as a measure of compensation after deducting a sum of Rs.10,000/- in case of Under Graduate students and Rs.25,000/- (Rupees twenty five

thousand only) in case of Post Graduate students and the State Government is entitled to withhold the said sum of Rs.10,000/- (Rupees ten thousand only) in case of Under Graduate students and a sum of Rs.25,000/- (Rupees twenty five thousand only) in case of Post Graduate students. The money so withheld by the State Government shall not be appropriated by it for any other purpose, but it must be exclusively spent for upgrading the infrastructure in one or more than one medical college administered by it.

W.A.Nos.263, 270, 398, 596, 597 and 923 of 2016 :

29. In view of our analysis of the legal regime and coming to the conclusion that the Post Graduate medical qualifications obtained by the students after LoP is granted to the institution concerned, such students are entitled to have such qualifications entered in the register maintained by the State Medical Council, the above reasoning applies equally in the other cases also, including to Under Graduate courses. We may also add that M.D. (Microbiology) course in Mahatma Gandhi Medical College and Research Institute, Puducherry has been recognized on 20.5.2016 (subject matter of W.A.Nos.264, 268 and 269 of 2016). Similarly, M.D.(Community Medicine) in Mahatma Gandhi Medical College and Research Institute, Puducherry has been recognized on 20.5.2016 (subject matter of W.A.Nos. 265, 266 and 267 of 2016). M.D. (Anesthesia) in ESI Medical College and Research Institute, Chennai has been recognized on 03.8.2013 and in so far as M.D. (General Medicine) is concerned, after considering the compliance report, the MCI recommended to the Central Government on 24.5.2016 for recognition of the course, which is the subject matter of W.A.Nos.320 and 614 of 2016.

सत्यमेव जयते

W.P.Nos.419, 420, 7261, 29419 to 29425 of 2016 :

30. The core issue raised in these writ petitions is all about the right to have their Post Graduate degree qualifications entered on provisional basis in the State Medical Register. In view of our findings above, since the students have prosecuted the course from the college, which has been accorded LoP, such qualifications deserve to be included in the State Medical Register on provisional basis.

31. For the aforesaid reasons, we find no merit in these writ appeals."

7. The facts narrated by the petitioner in the affidavit filed in support of the petition was not in dispute and the respondents have filed counter affidavit admitting the factual position.

8. The learned counsel appearing for the respondents 1 to 3 have not denied the proposition laid by this Court in the judgment referred above. However, the second respondent has raised an objection regarding the maintainability of the Writ Petition before this Court with regard to the territorial jurisdiction in entertaining the Writ Petition under Article 226 of the Constitution of India.

9. According to the second respondent none of the cause of action mentioned in this Writ Petition arose within the jurisdiction of this Court. The petitioner admittedly studied in the sixth respondent College, viz., Government Medical College, Kottaiyam, Kerala and the fifth respondent, Kerala University of Health Science has granted degree in MD (Radio Diagnosis) to the petitioner. Moreover, the fourth respondent-Travancore Cochin Council of Modern Medicine has refused to register the Post Graduate Qualification of the petitioner in the State Medical Register on the ground that the sixth respondent has no recognition from the Medical Council of India. Since the entire cause of action arose within the jurisdiction of the High Court of Kerala, it is stated that the writ petition is not maintainable and deserves to be rejected in-limine, for want of territorial jurisdiction.

10. The learned counsel for the petitioner relied upon the judgment of the First Bench of this Court in the case of Bharat Bhogilal Patel vs. Union of India, Ministry of Commerce & Industry, reported in 2014 5 LW 289, wherein it has been held as follows:

"8.CONCLUSION:

On an analysis of the aforesaid judgments, the principles which emerge can be summarized as under:-

- i) In view of the 42nd Constitutional Amendment and the wordings of Clause (2) of Article 226 of the Constitution of India, even a part of cause of action would confer jurisdiction on the Court.
- ii) The choice would be normally of the litigant approaching the Court as to where he would initiate the litigation if there were two High Courts which would have jurisdiction.
- iii) Merely because the original order is passed within the jurisdiction of another Court, it would not exclude the jurisdiction of the Court which is the situs of the appellate authority.

iv) The principles of forum conveniens, though applicable to international law as a principle of Comity of Nations, would apply to the discretionary remedy under Article 226 of the Constitution of India."

11. The respondents 1 and 2 have practically conceded before this Court as to the entitlement of petitioner for the relief sought for by the petitioner. Though the petitioner has studied and seeking a direction against the fifth respondent, which is not within the territorial jurisdiction of this Court, there is no dispute to the entitlement of the petitioner to get the relief. The petitioner was allotted a seat in the sixth respondent College in the counselling, which was conducted in Chennai and the direction to the fifth respondent is sought for on the basis of the statutory requirement of the third respondent under the Indian Medical Council Act.

12. The first respondent is the Central Government and the third respondent is the Medical Council of India. They are proper and necessary parties. The relief is against the respondents to perform their duty in accordance with the provision of Central Acts. The Writ Petition was filed in 2008 and it is pending for more than 10 years. Though the respondents have now conceded to the position that the petitioner is entitled to the relief, have not acted on their own for all these years. However, the respondents now raised an issue regarding the territorial jurisdiction of this Court to entertain the Writ Petition. Even if part of cause of action arises, within the jurisdiction of this Court, a Writ can be entertained. The petitioner appeared for the All India Medical Entrance Examination for the P.G. Course conducted by the respondents 1 and 2 through AIIMS. The petitioner attended counselling at Chennai and allotted originally in a College in Shimla and later got allotment in Kerala. With these complex facts, this Court do not wish to consider the objection as to the maintainability of the Writ Petition especially when the petitioner is found to be entitled to the relief and further delay would cause serious prejudice and irretrievable damage to the petitioner.

13. The learned counsel also relied upon the notification issued by the Medical Council of India, dated 05.04.2018, wherein, in clause 2 (2), it has been stated as follows:

"2.Clause 6(1), (2) & (3) under the heading "Starting of postgraduate Medical Courses and their recognition" of the "Postgraduate Medical Education Regulations, 2000", shall be substituted as under:

.....

(2) The Institution shall apply for recognition of the Post Graduate Medical qualification to the

Central Government through the affiliating University, when the first admitted batch shall be due to appear for the examination to be conducted by the affiliating University.

In the event of deficiencies being found in the assessment, the Institution shall be granted an opportunity to submit compliance within 30 days from the date of communication of deficiencies by the Council. Such an opportunity to comply with the deficiencies shall be availed by the Institute only twice. The Postgraduate Medical Education Committee on finding the compliance satisfactory shall convey the recommendation to recognize the course. In all other cases, the prior permission of the Central Government granted under sub-clause (1) shall be deemed to have lapsed after four and three years for Postgraduate Degree / Postgraduate Diploma courses respectively. Further, in such cases, recommendation shall be made to the Central Government to include the qualifications in the First Schedule of the Indian Medical Council Act, 1956 only in respect of first four batches of Postgraduate Degree Courses and three batches of Postgraduate Diploma courses. "

14. Since the above position is also admitted by the respondents, this Court can not hesitate to allow the Writ Petition. The respondents 1 and 3 to 5 are directed to register the Post Graduate MD (Radio Diagnosis) degree of the petitioner in the Indian Medical Council Register as per the provisions of the Indian Medical Council Act, 1956, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Secretary to Government,
Ministry of Human Resource
& Development Department,
Shastri Bhawan, New Delhi.

2. Ministry of Health & Family Welfare,
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Kerala State - 686 008.

+1cc to Mr. S.ThangaSivan, Advocate, S.R.No. 58706
+2cc to Mr. A.Nister Hakeem, Advocate, S.R.No. 58680
+1cc to Mr. S.Sathish Rajan, Advocate, S.R.No. 58664

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GN(24/09/2018)

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