

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8032 OF 2014

Quadri Sara Abrar

... Petitioner

Vs

1 Ashwini Rural Medical College &
Research Centre & Ors.

... Respondents

None for the Petitioner.

Mr. S.B. Kalel, AGP, for the Respondent Nos.1 & 2 – State.

Ms. Pallavi N. Dabholkar for the Respondent No.4.

**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

THURSDAY, 31ST JANUARY, 2019

P.C. :

1 This petition, under Article 226 of the Constitution of India, challenges the refusal on the part of the respondents to declare the result of the petitioner for the First Year MBBS course.

2 The petitioner claims a declaration to the effect that the Senior Secondary Examination Certificate issued by the

Uchatar Madhyamik Shikshan Mandal, Delhi (for short “UMSM”) is equivalent to the certificate issued by the Maharashtra State Board of Secondary Education.

3 The facts and circumstances in which this relief is claimed are summarised as under :

4 The petitioner states that she is a citizen of India and domiciled in the State of Maharashtra. The first respondent is a College affiliated to the respondent No.4 whereas respondent No.2 and 3 are the Department of Education, Government of Maharashtra and Department of Human Resources Development, Secondary and Higher Secondary Education, Government of India. It is claimed that the petitioner is an academically bright student and is presently undergoing studies for MBBS course at the first respondent college.

5 The petitioner says that she has completed her Secondary School Certificate course from the UMSM in the year 2013 with first class. She relies upon Exhibit-A, which is a copy of the mark sheet-cum-certificate.

6 Since the petitioner was interested in seeking admission to a Medical College on the strength of her certificate and marks at Exhibit-A, she was admitted to the first respondent-College. She was enrolled for the MBBS course and she also appeared for her first year examination. However, her results have been withheld. The reason for withholding the result is that the petitioner is not qualified nor is she eligible having not fulfilled the basic qualification or eligibility criteria of passing of the 10+2 examination. In other words, she should, before being enrolled as a First Year MBBS student, possess and establish that she has completed her 10th, 11th and 12th standards through the authorised and legal agency, namely, a State Board.

7 It is claimed that what the petitioner relies upon is not a certificate establishing and proving clearance of a 10+2 examination. The argument is that the clarification sought to be relied upon is at the instance of this Mandal and that is a self-generated document. That would not establish and prove the equivalence.

8 The counsel appearing for the petitioner would submit that the averments in the writ petition, supported by the documents, would denote that the petitioner fulfills the basic eligibility criteria. The petitioner's counsel places heavy reliance on Exhibit-D page 18 to urge that this UMSM is a recognised qualification. Our attention is also invited to Exhibit-E to the petition to urge that the admission granted to the petitioner is legal and valid.

9 The writ petition is essentially contested by the fourth respondent and it would urge that the fourth respondent has not recognised or accepted the UMSM certificate and the assertion of the petitioner based thereon. Even the additional affidavit will not establish and prove the petitioner's eligibility is the argument on behalf of the fourth respondent.

10 In the detailed affidavit-in-reply, the Maharashtra University of Health Sciences says that the qualification relied upon cannot be held to be equivalent to the passing certificate issued at the qualifying examination, namely, 10th and 12th. The passing certificate of this Senior Secondary Examination

Certificate Examination held by UMSM cannot be, therefore, accepted. It is urged that the petitioner was made aware of the fact that she would have to prove that UMSM is affiliated to the Council of Boards for Secondary Education of Delhi or that the certificate issued by them is equivalent to the Secondary School Certificate of the Board in the State of Maharashtra. The mandatory requirement was that this Institution issuing certificate had a recognition or approval from the Council of Boards for Secondary Education, Delhi. That UMSM was not approved by this Board and thus, without recognition of the Council of Boards for Secondary Education, Delhi, it cannot be held that the petitioner possesses an equivalent qualification.

11 Reliance is, therefore, placed on this affidavit and particularly the communication of 8th January, 2014, copy of which is at Exhibit-B page 27 of the paper-book as also the communication dated 31st January, 2014. This communication informs the Secondary Board of Higher Education that the Council of Boards of School Education in India will examine and approve the courses and after the communication in that regard is received, then alone the UMSM can proceed on the aforestated

lines.

12 After perusing this writ petition with all annexures thereto as also the affidavit of the respondent No.4, we have no reason to disbelieve the version of the Maharashtra University of Health Sciences. It has repeatedly been informing the first respondent-college that so long as a recognition and approval by the Council of Boards of School Education, Delhi, is not being produced, the admission of the petitioner will not be final nor can it be said to be legal and binding. This communication having not been received from that Council of Board of School Education, Delhi, the petitioner's appearance at the examination also cannot be of any avail. Relying upon such an appearance she cannot claim that the results should be declared,

13 This clear communication from the University to the College having been placed on record and the College so also the petitioner having been made aware of the issue and controversy, it was incumbent upon them to produce a document which would enable us to hold that the Council of Board of School Education, Delhi has recognised and approved the UMSM qualification.

Instead, the fourth respondent was informed by the Council at Delhi that it is still considering the request of UMSM and till that date it has not communicated its approval and recognition of UMSM. Therefore, it was for the petitioner and the respondent No.1 to place on record any such approval from the Council. That having not been placed on record, it will be very risky and highly unsafe to interfere with the academic decision and that too by the Maharashtra University of Health Sciences. It is an academic body comprising of several experts in the field. It is they who can take the decision on the equivalence. In matters of such nature, the Courts possess no expertise and the Courts cannot substitute their view in place of these authorities or academic bodies.

14 The reliance placed on the decision of the Hon'ble Supreme Court by Mr. Kolge is of no assistance to the petitioner. There, the Hon'ble Supreme Court was seized of a very distinct controversy. There, the appellant passed Higher Secondary Examination conducted by the Board of Secondary Education, Rajasthan and applied for admission to the First Year of the Engineering Degree course. That was to a private Engineering College affiliated to the Karnataka University. The admission

rules framed by the Karnataka University governed the field. The Vice Chancellor, in exercise of the emergency powers conferred upon him by section 12(5) of the Karnataka University Act, issued an order prescribing, *inter alia*, conditions of eligibility for admission to the First Year of the Engineering Degree course. This order of the Vice Chancellor was approved by the Academic Council and the Syndicate and it governed admission to be made to the First Year of the Engineering Degree course in the Academic Year 1981-1982. After referring to this condition of eligibility, the Hon'ble Supreme Court referred to the fact that Higher Secondary Examination in the State of Rajasthan required only eleven years schooling and the State of Rajasthan did not follow the 10 + 2 pattern. As far as Karnataka State is concerned, it followed this pattern. Thus, one had to undergo education upto standard 10 and thereafter two years so as to be held eligible. The candidate, therefore, was not eligible for admission to this Engineering Degree course. The Hon'ble Supreme Court referred to these facts and the communication from the Academic Body and then the factum of a writ petition being filed in the High Court of Karnataka challenging the cancellation of the admission by the Karnataka University and

after all the contentions were referred, in the backdrop of such Rules, the Hon'ble Supreme Court came to the conclusion that it is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best suited to decide whether any examination held by the University outside the State is equivalent to an examination held within the State and that is having regard to the courses, the syllabus, the quality of teaching or institution and the standard of the examination. Thus, this is an academic question. To our mind, we have not at all deviated from these principles. We have applied these very principles when we reach the conclusion that so long as an academic body like the Council at Delhi renders a definite or final opinion on the point of equivalence, it is not for this Court to come to the aid or assistance of the petitioner. If that question has not been examined or not considered till date, then, it is not for this Court to direct the Council at Delhi to take a particular course of action or a view. In the circumstances, we do not think that reliance on this decision carries the case of the petitioner any further.

15 As a result of the above discussion, we do not think that any relief can be granted to the petitioner in the writ jurisdiction. The petitioner has failed to establish a pre-existing right in her favour to seek a writ of mandamus. That is a pre-requisite and such right cannot be said to be inchoate or contingent. Once there is no pre-established and pre-existing legal right, then, no mandamus can be issued at the instance of the petitioner. As a consequence, this writ petition fails. It is dismissed, but without any order as to costs.

M.S. KARNIK, J.

S.C. DHARMADHIKARI, J.