

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 2526 of 2018
&
C.M.P.No.20405 of 2018

Board of Governors in Suppression of
the Medical Council of India,
Rep by its Secretary-General,
Pocket - 14, Sector - 8, Dwaraka,
New Delhi - 110 077.Petitioner

-vs-

1. Thamarai Selvan
2. The President,
Tamil Nadu Medical Council,
No.914, Poonamalle High Road,
Arumbakkam, Chennai - 106,
Tamil Nadu.
3. The Government of India,
Rep by the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi - 110 011.
4. The State of Tamil Nadu,
Rep by the Secretary,
Ministry of Health & Family Welfare,
St.George Fort, Chennai,
Tamil Nadu.

...Respondents

Writ Appeal filed under clause 15 of Letters Patent against
the order of this Court dated 28.09.2018 in W.P.No.6457 of 2017.

Prayer in W.P.No.6457 of 2017: To issue certificate of
provisional registration considering the petitioners application
dt 13.2.2017 so as to enable the petitioner to undergo the
Compulsory Rotatory Residential Internship (CRRI) in any
approved Medical College - Hospital in the State of Tamil Nadu
subsequently issue permanent registration certificate on
successful completion of CRRI (in W.P.No.6457/2017)

For Petitioner .. Mr.Raman V.P.

For Respondents .. Mr.S.Packiyaraj (for R.1)

JUDGEMENT

This appeal by the Medical Council of India is directed against the order passed in W.P.No.6457 of 2017 dated 28.09.2018.

2.Though the student by name Thamari Selvan was the writ petitioner who approached the Court seeking for a direction to issue certificate of provisioonal registration considering his application dated 13.02.2017 to enable him to undergo Compulsory Rotatory Residential Internship (CRRI).

3. The appellant/Medical Council of India is aggrieved only by the observations/direction issued in paragraph 17 of the impugned order which reads as follows:

"Hence, there is an urgent need for the Medical Council of India as well as Government of India to prescribe minimum marks of 80% to get admission in the Foreign Medical Colleges, as otherwise, the adverse consequences, as explained above, would definitely follow, which may not be in the interest of the people, nation, the students and their families. Therefore, interest of justice requires that there should be a direction to the Medical Council of India or any successive body to be established by the Government of India to act immediately to prevent the occurrence of aforesaid negative consequences."

4.When the appeal came up for hearing before us on 13.02.2019, we sought for certain clarification from the Medical Council of India and passed the following order:

"The respondent/writ petitioner has secured the relief sought for by him in the writ petition and he is now enrolled on the rolls of the Tamil Nadu Medical Board. The appellant/Medical Council of India seeks to prosecute again this appeal, in the light of the directions issued by the learned Single Bench more particularly para 17 and 18 of the impugned order.

2. When the writ petition was filed by the respondents in the year 2017, there was no requirement for a candidate to secure NEET qualification to become eligible to apply for admission for MBBS course in foreign Country. The Medical Council of India vide notification dated 01.03.2018 had amended the Screening Test Regulations 2002 by inserting Clause 2(A) after Clause 4(2) of the said regulation which reads as follows:

"2(A) Indian Citizens/Overseas Citizen of India intending to obtain primary medical qualification from any medical institution outside India, on or after May 2018, shall have mandatorily qualify the 'National Eligibility cum Entrance Test' for admission to MBBS course'. The result of the 'National Eligibility-cum-Entrance Test for Admission to MBBS Course' shall deem to be treated as the Eligibility Certificate for such persons, provided that such persons fulfils the Eligibility Criteria for admission to the MBBS course prescribed in the Regulations on Graduate Medical Education, 1997."

3. On a perusal of the newly inserted Clause 2(A), it is seen that Indian citizens and overseas citizens of India, intending to obtain prior medical qualification from a medical institution outside India after May, 2018 shall have to mandatorily qualify the NEET for admission to MBBS course and the result of NEET deem to be treated as eligibility certificate for such persons provided that such persons fulfils eligibility criteria for admission to MBBS course prescribed in Regulations on Graduate Medical Education, 1997. We direct the appellant/Medical Council of India to clarify as to what would be the purport and import of the word "Qualify" and also the effect of Regulation of Graduate Medical Education 1997. We have called upon the Medical Council of India to examine as to whether the bench mark suggested by the Court in the impugned order, if taken into account, would definitely improve the quality of medical education especially in respect of such those candidates who are securing degrees from Foreign Countries.

4. We can take judicial notice of the fact that every year prior to the declaration of the NEET results, results of plus two examinations, several institutions abroad advertise in the media inviting students to apply for MBBS course. There is a marked increase in the number of such universities which advertise for admission to MBBS Course in Foreign University.

5. Therefore, it is high time that Medical Council of India takes a decision in the matter so that a person who is unable to secure sufficient marks in India to be entitled to get admission in MBBS course should not have an unfair advantage by applying for MBBS course outside the Country. If this is not properly curbed, there will not be a level playing field though there is a screening test conducted by

Medical Council of India after the candidates obtained degree from the Foreign University.

6. We further direct the Medical Council of India to state before us in the form of an affidavit as to whether any screening is done by Medical Council of India with regard to the effectiveness of the education imparted by the Foreign Universities. We are concerned with this because, the current trend is increasing day by day.

7. Therefore, we direct the appellant to file comprehensive affidavit clearly explaining the queries raised by this Court. List the matter for further directions on 26.02.2019. Record of the proceedings show that interim orders were granted on 19.11.2018 and extended from time to time. In the light of the directions issued by us in the preceding paragraphs, the interim orders already granted are extended till then.

8. Post the matter on 26.02.2019."

5. In response to the direction issued by us in the aforementioned order an affidavit has been filed by the Medical Council of India dated 08.03.2019 sworn to by the Law Officer of the Medical Council of India.

6. We find that the learned Single bench had issued the directions more particularly containing a Para 17 of the impugned order on the ground that there is a fall in standard of medical education and the Medical Council of India should prescribe minimum marks of 80% in the +2 examination to secure admission in Foreign Medical College.

7. Before considering as to whether learned Single Bench could have issued such a direction, we wanted the Medical Council of India to clarify as to the minimum mark which is required to be secured by a candidate to enable to apply an eligibility certificate from the Medical Council of India to apply to Foreign University to pursue MBBS course. This had been explained in Paragraph 28 of the additional affidavit which reads as follow:

"28. It is submitted that Regulation 5(5)(4) of the aforesaid Regulations provides that in order to be eligible for admission to MBBS course, a candidate must obtain minimum of marks at 50th percentile in NEET for the said academic year. However, in respect of candidates belonging to SC/ST/OBC categories the minimum marks shall be at 40th percentile. In respect of candidates with disabilities in terms of Regulation 4(3), the minimum marks shall be at 45th percentile for

general category and 40th percentile for SC/ST/OBC categories. It further provides that the percentile shall be determined on the basis of highest marks secured in the All India Common Merit List in NEET for admission into MBBS course."

8. What is important to note is that the marks obtained in the qualifying examination namely +2 examination has lost its significance for the academic session 2019-20, since the admissions are based on the percentile scored by a candidate in the NEET. We are concerned with a case which arose for academic session 2018-19. The reason for not being able to implement the minimum percentile required to implement in the NEET for this academic session 2019-20 was on account of the fact that last date for applying for NEET was 09.03.2018 and the amendment was brought in on 01.03.2018. Therefore, the High Court of Delhi had issued directions to the Medical Council of India to consider one time examination for the academic session 2018-19 batch and not to insist upon minimum percentile score to NEET. As this mark becomes the qualifying mark to apply for a foreign University, we find that in the impugned order of the learned Single Bench was aware of the fact that the minimum marks required to be secured in NEET to enable for applying in foreign University since it has been noted in para 12 of the impugned order.

9. Therefore, we are of the view that it would be beyond the jurisdiction of the Court to direct the Medical Council of India as well as the Government of India to prescribe minimum marks of 80% in the qualifying examination namely, +2 examination for admission in foreign Medical Colleges since after the introduction of NEET, the marks obtained in the qualifying examination namely +2 is taken for the purpose of applying NEET examination.

8. For the above reasons, the writ appeal is allowed to the extent indicated above. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The President,
Tamil Nadu Medical Council,
No.914, Poonamalle High Road,
Arumbakkam, Chennai - 106,
Tamil Nadu.
 2. The Government of India,
Rep by the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi - 110 011.
 3. The State of Tamil Nadu,
Rep by the Secretary,
Ministry of Health & Family Welfare,
St.George Fort, Chennai,
Tamil Nadu.
 4. The Medical Council of India,
Rep by the Secretary,
Aiwan-E-Galib Marg, Kotla Road,
New Delhi.
- +1 cc to Mr.V.P.Raman, Advocate, S.R.No.23512
- +1 cc to Mr.S.Packiaraj, Advocate, S.R.No.23363

PP(CO)
SSM(29/04/2019).

W.A.No.2526 of 2018

सत्यमेव जयते

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