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

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Decision of Date: 31.10.2019

+ **W.P.(C) 3583/2018**

PATNAM AZEEZ Petitioner

Through Ms. Anushruti, Adv.

versus

MEDICAL COUNCIL OF INDIA AND ANR. ... Respondents

Through Mr. T. Singhdev with Mr. Abhijit Chakravarty, Ms. Michelle B. Das, Ms. Puja Sarkar, Ms. Arunima Pal, Mr. Tarun Verma and Ms. Sumangla, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

CM No.4193/2019

1. This is an application for taking the accompanying rejoinder on record.
2. For the reasons given in the application, the prayer is allowed. The rejoinder is formally taken on record.
3. The application is disposed of.

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4. The substantive prayers made in the petition are as follows:

“A. Issue a Writ, Order or direction in the nature of certiorari thereby quashing/ setting aside the impugned

order dated 21.04.2017 passed by the Respondent and annexed to this writ petition as Annexure P-1;

B. Issue a Writ, Order or direction thereby directing the Respondent to issue eligibility certificate to the petitioner as required under The Eligibility Requirement For Taking Admission In An Undergraduate Medical Course In A Foreign Medical Institution Regulations, 2002.”

5. As is evident from the perusal of the prayers extracted above, the petitioner is aggrieved by the impugned communication dated 21.4.2017 issued by the Medical Council of India (in short “MCI”).

5.1 The MCI, via the impugned communication, has declined to grant eligibility certificate to the petitioner. The petitioner requires the issuance of eligibility certificate by the MCI as he is pursuing his MBBS degree in a foreign medical institute.

6. The record shows that the petitioner had made an application for issuance of an eligibility certificate on 31.1.2017. For issuance of an eligibility certificate, the petitioner was required to fulfil the eligibility criteria as laid down in the Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 (in short “2002 Regulations”) and Graduate Medical Education Regulations, 1997 (in short “1997 Regulations”).

7. The record also shows that the petitioner did not take up biology as a subject in grade XI and XII standard. The petitioner, however, had taken English, physics, chemistry, mathematics and Sanskrit as his subjects in grade XI and grade XII.

7.1 Besides this, the petitioner was imparted instructions in physics and chemistry practicals by the concerned school.

7.2 Since the petitioner did not have biology as a subject in grade XI and XII, via the impugned communication, the MCI held that he was not eligible for admittance to the MBBS course or an equivalent course either in India or outside the country.

7.3 It is in this backdrop of the matter, the petitioner's request for issuance of an eligibility certificate was declined in terms of Clause 4(2) of the 1997 Regulations.

8. Mr. T. Singhdev, who appears for the MCI, has fairly drawn my attention to the judgment dated 17.8.2018 rendered by the Division Bench of this Court, passed in W.P.(C) No.6773/2018, titled ***Tanishk Gangwar & Ors. vs. Union of India & Ors.*** In particular, my attention is drawn to Paragraph 28 of the judgment. For the sake of convenience, the same is extracted hereafter;

"28. Lack of any empirical study, supporting the MCI's conclusion that those who qualify from regular scholastic study in the 10+2 exams with additional subjects of biology/biotechnology either at one go, or after a year, do so without laboratory experience render Regulation 4(2)(a) to that extent arbitrary, Juxtaposed with clause (b) of Regulation 4(2) which talks of Intermediate state boards which does not bespeak of any such disqualification, the intentional and arbitrary nature of the regulation stands out in sharp relief. As outlined in para 24, the MCI's regulations are based on its conclusions rather on any data or objective material. For these reasons, it is held that the category covered in SI. No. (7) of the clarification issued by MCI and the regulation (Regulation 4 (2) (a)) to the extent it sets out the impugned disqualification "Furthermore, study of Biology/Biotechnology as an Additional Subject at 10+2 level also shall not permissible..." are hereby set aside as discriminatory and arbitrary."

(emphasis is mine)

9. A perusal of Paragraph 28 of the aforementioned judgment would show that Clause 4(2)(a) of the 1997 Regulations to the extent it forbade issuance of an eligibility certificate to those applicants who had studied biology as an additional subject was set aside.

9.1 Concededly, in this case, the petitioner sat for an exam in botany and zoology in 2016 and was issued a certificate in that behalf by the Board of Intermediate Education, in the State of Andhra Pradesh. Permission in this behalf was granted by the Secretary, Board of Intermediate Education vide communication dated 2.9.2015. These documents are appended at pages 43 to 45 and marked as Annexure P-3 to P-5 of the paper book.

10. Having regard to the aforesaid, it is apparent that the impediment which was in the way of the petitioner has been removed. Therefore, as suggested by Mr. Singhdev, this writ petition is disposed of with the following directions:

- (a) The petitioner will make a representation via his father (as the petitioner is located outside the country) for issuance of an eligibility certificate.
- (b) The representation will be made within one week of the receipt of a copy of this order.
- (c) The MCI will dispose of the representation within two weeks from the date of receipt of the representation.

10.1 Needless to add, if the petitioner is still aggrieved, after the disposal of the representation by the MCI, he will have liberty to take recourse to an appropriate remedy as per law.

CM No.31504/2018

11. This is an application for early hearing. In view of the order passed in the writ petition, this application is rendered infructuous.
12. The application stands disposed of.

RAJIV SHAKDHER, J

OCTOBER 31, 2019

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