

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.16529 and 16534 of 2020
and

WMP Nos.20510 , 20512, 20517 and 20515 of 2020

Kashvi Udhayakumar ..Petitioner in W.P.No.16529 of 2020

.Vs.

- 1.Union of India,
Rep.by Ministry of Health &
Family Welfare,
"A" wing Nirman Bhavan,
New Delhi - 110 001.
- 2.National Medical Commission,
Represented by its Secretary General,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi - 110 077.
- 3.Medical Counselling Committee,
Represented by its Secretary,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi-110 011.
- 4.Sri Ramachandra Medical College and
Research Institute,
Represented by its Dean,
No.1, Ramachandra Nagar,
Porur, Chennai,
Tamil Nadu 600 116.
- 5.Association of Indian Universities,
AIU House, 16, Comrade Indrajit Gupta Marg,
New Delhi-110 002.

..Respondents
in W.P.No.16529 of 2020

Roshan Parthasarathy

..Petitioner
in W.P.No.16534 of 2020

.Vs.

- 1.Union of India,
Represented by the Ministry of
Health & Family Welfare,
'A' Wing, Nirman Bhavan,
New Delhi - 110 001.

2.National Medical Commission,
Represented by its Secretary General,
Pocket-14, Sector-8,
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Represented by its Secretary,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi-110 011.

4.Sri Ramachandra Medical College and
Research Institute,
Represented by its Dean,
No.1, Ramachandra Nagar,
Porur, Chennai,
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5.Association of Indian Universities,
AIU House, 16, Comrade Indrajit Gupta Marg,
New Delhi-110 002.

..Respondents
in W.P.No.16534 of 2020

Common Prayer: Writ Petition filed under Article 226 of
Constitution of India to issue a Writ of Mandamus, directing
the respondent nos.1 to 4 to complete the admission
formalities/procedures for the grant of admission and confirm
the petitioner's admission to pursue the I year MBBS Course
with the 4th Respondent Institution for the academic year 2020-
2021.

For Petitioner : Mr.Satish Parasaran
(in Both WPs) Senior Counsel
for Mr.G.Ramdas

For Respondents : Mr.R.Sankaranaryanan
Additional Solicitor General of India
for RR 1, 3 and 5

Mr.V.P.Raman
Standing Counsel
for R 2

Mr. Abhishek Jenasesan,
Standing Counsel
for R 4

COMMON ORDER

The issue involved in both these writ petitions are
common and hence both the Writ Petitions are taken up together
and this Common Order is passed.

2. Both the petitioners are seeking for a direction to the respondents to complete the admission formalities/procedures for the grant of admission and confirm the petitioner's admission in the 4th Respondent Institution from the academic year 2020-2021.

3. The petitioners were residing in USA and they have pursued their entire school education in USA. Both of them completed their school education and decided to join MBBS Course in India.

4. The petitioners got the confirmation from the Equivalence Committee and the Standing Committee of the Association of Indian Universities that the high school diploma underwent by the petitioners in USA is equivalent to 12-year senior school Certificate of Central Board of Secondary Education.

5. The petitioners applied for writing the NEET Examination and they came over to India and took the examination and secured 217 marks and 223 marks respectively. According to the petitioners, the certificates issued by the Equivalence Committee dt. 26.08.2020 and 21.09.2020 respectively, qualifies the petitioners for admission to a Medical Course in India in accordance with the Graduate Medical Education Regulations.

6. The petitioners were issued with the provisional allotment letter by the 2nd respondent on 06.11.2020 and they were allotted admission into the 1st year MBBS Course for the academic year 2020-2021, at the 4th Respondent Institution under the NRI quota. The petitioners also remitted the requisite fees to the 4th Respondent Institution.

7. The petitioners did not get any confirmation regarding their admission from the 4th Respondent Institution. When the petitioners enquired, they came to understand that the 4th Respondent Institution has stopped the admission of the petitioners at the provisional allotment stage on the ground that the petitioners did not comply with the eligibility criteria of undergoing two years of study in subjects comprising Physics, Chemistry and Biology. Aggrieved by the same, the present Writ Petition have been filed before this Court.

8. Respondents 1, 3 and 5 have filed a counter affidavit. The 4th respondent has also filed an independent counter affidavit explaining as to why the petitioners are not fulfilling the eligibility criteria and hence not entitled for admission in the 4th Respondent Institution.

9. Heard Mr. Satish Parasaran, learned Senior Counsel appearing for the petitioners, MR. R. Shankaranaryanan, learned Additional Solicitor General of India for respondents 1, 3 and 5, Mr. V.P. Raman, learned Standing Counsel for 2nd respondent and Mr. Abhishek Jenasesan, learned Standing Counsel for 4th respondent.

10. The relevant Graduate Medical Education (GME) Regulation issued by the Medical Council of India, is extracted hereunder:

4(2) He/She has passed qualifying examination as under :-

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology/Biotechnology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education;

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges;

Or

(b) The intermediate examination in science of an Indian University/Board or other recognised examining body with Physics, Chemistry and Biology/Bio-technology which shall include a practical test in these subjects and also English as a compulsory subject;

Or

(c) The pre-professional / pre-medical examination with Physics, Chemistry and Biology/Bio-technology, after passing either the secondary school examination, or the pre-

university or an equivalent Examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry and Biology/Bio-technology and also English as a compulsory subject;

Or

(d) The first year of the three years degree course of a recognized university, with Physics, chemistry and Biology/Bio-technology including a practical test in three subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less than a core course;

Or

(e) B.Sc. examination of an Indian University, provided that he/she has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology)/Bio-technology and further that he/she has passed the earlier qualifying examination with the following subjects - Physics, Chemistry, Biology and English.

Or

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology/Biotechnology including practical test in each of these subjects and

English.

Note:

The pre-medical course may be conducted either at Medical College, or a science College.

Marks obtained in Mathematics are not to be considered for admission to MBBS Course.

After the 10+2 course is introduced, the integrated courses should be abolished.

11. According to the 4th Respondent, the Equivalence Certificate issued by the concerned Authority only confirms the eligibility of the candidate for writing the NEET Examination and insofar as the subject wise eligibility is concerned, it is for the relevant University/Institution to verify the same and satisfy themselves on the eligibility of a

candidate. The 4th Respondent on scrutiny of the subjects completed by the petitioners in Grade 9 to 12, found that none of the Science subjects were undergone by the petitioners in Grade 12 and therefore the 4th Respondent has come to a conclusion that the petitioners have not fulfilled the requirements of the GME Regulation.

12. The issue raised in the present Writ Petition does not require any elaborate deliberations since it is covered by the earlier Orders passed by this Court in W.P.No.32099 of 2019, dt. 14.07.2020. That was a case involving Dental Council of India. The relevant Regulation of the Dental Council of India is in pari materia with the Regulation extracted supra. On considering the said Regulation, this Court came to the following conclusions and the same are extracted hereunder:

14. A careful reading of the above regulations makes it clear that a candidate even at the time of taking NEET examination must fulfill the eligibility criteria that is prescribed in Clause 3 which is extracted supra. Clause 3 contains six sub clauses from (a) to (f). Each sub-clause is independent of the other and none of the sub-clauses can be read together. For the purposes of this case, sub-clause (a) and sub-clause (f) requires consideration.

15. The case of the petitioner is that she falls under sub-clause (f) of the regulations. Any candidate who falls under sub-clause (f) of the regulations, has to obtain an equivalence certificate from the concerned authority. The concerned authority is the Association of the Indian Universities. This authority considered the degree/diploma obtained by the petitioner in as educational institution at USA. The concerned authority found that the qualification of the petitioner is equivalent to the senior school certificate of CBSE/other boards in India. The evaluation of the educational credentials has been extracted supra.

15. It is based on this equivalence certificate, the petitioner was allowed to write the NEET examination and the petitioner secured 258 marks and she was allotted a seat in the fourth respondent college by the allotment order passed by the third respondent, dated 24.07.2019. The petitioner is undergoing the course.

16. The second respondent by a letter dated 30.08.2019 had informed the Dental Council of India that the petitioner has not undergone the subjects of Physics, Chemistry, Biology and English within the last two years and it was spread out over a period of four years from 2014 to 2017 from grade 9 to 12. If this sub-clause is to be read into every other sub-clause provided under clause 3 of the regulations, the regulation itself must provide for the same and it will not depend upon how the second respondent wants to read the regulations. The regulations makes it clear that sub-clause (a) to sub-clause (f) are independent to each other and there is no requirement to read sub-clause (a) into sub-clause (f) and that is the reason why the second respondent came to an erroneous conclusion. If a candidate fulfills the criteria fixed under sub-clause (a), there will not even be any requirement to get an equivalence certificate. Sub-clause (a) covers the scenario as is prevalent in India both in CBSE and other boards. The same structure may not be available in other countries and that is the reason why an equivalence certificate is insisted even at the time of writing the NEET examination to determine the eligibility criteria. The concerned authority has issued a certificate and it was not even referred by the second respondent in the letter dated 30.08.2019. In the considered view of this Court, the second respondent has misread the regulations and unfortunately has come to an erroneous conclusion by trying to fit in the case of the petitioner in Sub-clause (a) of Clause 3 of the regulations.

17. The first respondent has issued the impugned letter dated 24.09.2019 purely based on the letter given by the second respondent University and the same is clear even from the counter affidavit filed by the first respondent. The consequential letter dated 15.10.2019 is only a continuation of the decision taken by the Dental Council of India.

18. From the above discussion it is clear that the second respondent completely misdirected itself by giving their own interpretation to the 2007 regulations, which is otherwise very clear. The case of the petitioner squarely falls under Sub-Clause (f)

of Clause 3 and it required an equivalence certificate which was produced by the petitioner even before she took the NEET examination. There was no need for the second respondent to have read Sub-Clause (a) by telescoping it into Sub-Clause (f) and that has lead to all this confusion. In view of the same, this Court has no hesitation to interfere with the impugned letter of the first respondent dated 24.09.2019 and the consequential letter dated 15.10.2019 and the same is hereby quashed. In is a considered opinion of this Court, the petitioner possesses the eligibility criteria as per the 2007 Regulations and she is entitled to continue with the course in the fourth respondent college.

13. It was categorically held by this Court that each Clause is independent of the other and none of the subclauses can be read together. If the candidate has fulfilled the requirements of any one of the Clause, he or she will be entitled for admission to the Medical Course. The petitioners in the present case will fall within Regulation 4 (f) and once the petitioners have produced the Equivalence Certificate issued by the 5th Respondent, there is no more requirement to again subject the petitioners for one more scrutiny on their eligibility. It will be too far fetched to declare that a candidate who fulfills the requirements for NEET Examination, will not fulfill the qualification when it comes to joining the MBBS Course. Such an interpretation will lead to illogical consequences. The petitioners who were living in USA have come to this country to undergo the Medical Course and they were found to be eligible by the Equivalence Committee to write the NEET Examination. After having been given an allotment in the 4th Respondent Institution, the 4th Respondent Institution cannot now undertake one more exercise and come to a completely different conclusion by reading Regulation 4 (a) into Regulation 4 (f) and thereby render the effect of Regulation 4 (f) completely nugatory and redundant.

14. In view of the above discussion, this Court is inclined to allow these Writ Petitions and there shall be a direction to the 4th Respondent, to complete the admission formalities of the petitioners and permit the petitioners to pursue the MBBS Course in the 4th Respondent Institution from the academic year 2020-2021.

15. These Writ Petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Secretary,
The Ministry of
Health & Family Welfare,
Union of India,
'A' Wing, Nirman Bhavan, New Delhi - 110 001.
2. The Secretary General,
National Medical Commission,
Pocket-14, Sector-8,
Dwarka Phase-1, New Delhi - 110 077.
4. The Secretary,
Medical Counselling Committee,

Directorate General of Health Services,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi-110 011.
5. The Dean,
Sri Ramachandra Medical College and
Research Institute,
No.1, Ramachandra Nagar,
Porur, Chennai, Tamil Nadu 600 116.
6. Association of Indian Universities,
AIU House, 16, Comrade Indrajit Gupta Marg,
New Delhi-110 002.

+1cc to M/s.V.P.Raman Advocate SR.NO.38637

+2cc to M/s.Abishek Jenasesan Advocate SR.NO.38717

W.P.Nos.16529 and 16534 of 2020

KV CO

SDR 19/12/2020