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

+ **W.P.(C) 11828/2019 & CM No.2560/2020**

Date of decision: 22.01.2020

DIRTESH YADAV

..... Petitioner

Through : Mr. Vivek Sharma and Mr. Harsh,
Advs.

versus

MEDICAL COUNCIL OF INDIA & ANR .

..... Respondents

Through : Mr. T. Singhdev, Ms. Arunima Pal,
Mr. Abhijit Chakravarty,
Ms. Manpreet Kaur and Ms. Sumangla
Swami, Advs. for MCI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

CM No.2560/2020

1. This is an application seeking impleadment of National Board of Examination (NBE).
2. Mr. T. Singhdev, who appears on advance notice on behalf of respondent no.1/MCI, says that, at this stage, there is no necessity to implead NBE as not only a co-ordinate Bench but also the Division Bench of this court have passed orders which enure to the benefit of the petitioner.
3. Therefore, Mr. Singhdev suggests that this application can be disposed of and the main matter can be taken up for hearing.
4. To be noted, the writ petition is listed on 15.04.2020.
5. Mr. Vivek Sharma, who appears on behalf of the petitioner, is

agreeable to the suggestion made by Mr. Singhdev.

6. Accordingly, the captioned application is not pressed by learned counsel for the petitioner.

7. The application is, accordingly, disposed of.

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8. The petition is taken up for hearing with the consent of learned counsel for the parties.

9. I may only indicate that the National Institute of Open Schooling (NIOS) is arrayed as respondent no.2 herein.

10. According to learned counsel for the petitioner, since the contesting respondent is respondent no.1/MCI, this court can proceed with the matter without respondent no.2 being before the court.

11. Mr. Singhdev has brought to my notice the judgments based on which he contends the writ petition can be disposed of. The first in line is a Division Bench judgment of this court in the case of *Anshul Aggarwal v. Union of India & Ors., 2018 SCC OnLine Del 8965*; the second is the judgment dated 31.10.2019 passed by this court in W.P.(C)No.3583/2018, titled : *Patnam Azeez v. Medical Council of India & Anr.* and; the third is the judgment of the co-ordinate Bench dated 17.01.2020 passed in W.P.(C)No.643/2020, titled : *Mansur Badagi Through: His Father/Pairokar v. Board of Governors in Supersession of Medical Council of India.*

12. With this preface, it may be relevant to etch out the main issue. The principal grievance raised by the petitioner in the instant writ petition is that respondent no.1/MCI has not issued him an “eligibility certificate”. It is because the eligibility certificate is not issued, the petitioner is not able to

take the Foreign Medical Graduate exam which is conducted by the NBE.

13. It is important to note that the petitioner had passed his Grade-XII exam from NIOS. The petitioner passed this exam in 2012. In Grade-XII, the petitioner studied the following subjects :

“Physics, Chemistry, Biology, English and Psychology.”

14. The record shows that on 26.11.2012, the petitioner applied to respondent no.1/MCI for issuance of an eligibility certificate.

14.1 This application was, however, rejected by respondent no.1/MCI vide order dated 06.09.2017. The reasons given in the order of the MCI are extracted hereafter :

“After scrutiny of the application, it is observed that you have failed in your 1 class and subsequently passed 12th class directly through National Institute of Open Schooling. In this regard, your attention is invited to clause 4 (2) (a) & (b) of the Graduate Medical Education Regulation, 1997, wherein the operative part reads as under:

"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/Bio-technology 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

preprofessional training before admission to the Medical colleges.

(b) The intermediate examination in science of an India 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."

In view of above, you are not eligible for issue of eligibility certificate. Therefore, your request for eligibility certificate is regretted."

15. As would be seen from the extract above, apart from quoting a Regulation 4(2)(a) & (b) of the Graduate Medical Education Regulation, 1997, no discernible reason is given as to why the request for issuance of eligibility certificate was rejected.

16. Mr. Singhdev says that the reason as to why the request for issuance of eligibility certificate was rejected was on account of the fact that the petitioner had cleared his Grade-XII exam from NIOS.

17. It is, therefore, Mr. Singhdev's contention, based on the judgments referred to hereinabove, that if a representation is made to respondent no.1/MCI, the same will be considered within a defined timeframe.

18. Accordingly, the captioned 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 from the date of receipt of a copy of this order.

(c) Respondent no.1/MCI will dispose of the representation within two weeks from the date of receipt of the representation.

18.1 Needless to add, if the petitioner is still aggrieved, after the disposal of the representation by respondent no.1/MCI, he will have liberty to take recourse to an appropriate remedy as per law.

19. I may only indicate while disposing of the representation that respondent no.1/MCI will bear in mind the aforementioned judgments which includes the judgment of the Division Bench in the matter of *Anshul Aggarwal*.

20. Thus, the date of 15.04.2020, already fixed in the writ petition, shall stand cancelled.

JANUARY 22, 2020

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RAJIV SHAKDHER, J