

30.11.2022
Item No. 1
Ct. No. 238
AKG

WPA 18950 of 2019

Ajit Chandra Saha
Versus
Central Council of Homoeopathy & Ors.

Ms. Nandini Mitra
...for the Petitioner
Mr. Debraj Bhattacharya,
Mr. Debasish Kar
...for the Respondent Nos. 2 & 3.
Mr. Debapriya Gupta
...for Central Council of Homoeopathy

The petitioner successfully completed his B.H.M.S. degree course from West Bengal University of Health Sciences in the year 2017. Thereafter he sought to register himself as a Homoeopathy Doctor under respondent no. 2, the Council of Homoeopathic Medicine, West Bengal, (in short, "said Council"). The said Council, however, declined to grant registration to the petitioner by a communication dated September 2, 2019 impugned in this writ petition.

It is necessary to quote the said letter of communication dated September 2, 2019 order issued by the Registrar of the said Council in extenso :-

"Your client Sri Ajit Chandra Saha took admission to the BHMS course of study in the year 2011-2012 at the National Institute of Homoeopathy under the West Bengal University of Health Science in Violation of the admission regulation of Homoeopathy (Degree

Course) Regulations. Inasmuch as he did not pass the Higher Secondary Examination comprising of twelve years of study i.e. 10+2 Higher Secondary Examination. Sri Saha fraudulently took admission to the BHMS course of study and foisted his candidature upon submission of a mark sheet issued by the Tripura Board of Secondary Education that comprises of eleven years of study and not twelve years as required for admission to the course of study. Inasmuch as Sri Saha took admission to the course in contravention of the regulation for admission and did not have the eligibility criteria he ought not to be admitted to the BHMS course of study and he is not entitled to BHMS degree and/or certificate and as such Sri Saha is not entitled to Doctor's Registration as claimed by him.

We sent letter to Director of National Institute of Homoeopathy, Registrar West Bengal University of Health Science and Registrar, Central Council of Homoeopathy twice (Vide Ref. No. HC/183 dt. 18.04.2019, HC/514/IV-1/92 dt. 25.06.2019, HC/618 DT. 13.08.2019, HC/616 dt. 13.08.2019 and HC/514/IV-1/92 dt. 25.06.2019, HC/217 dt. 13.08.2019) through Speed Post and E-mail, for explanation and direction. Council will decide whether Doctor's Registration Certificate issue or not to him after replies received from competent authorities. But till date no replies received by Council.

Please note that since the admission of Sri Saha, your client, is illegal, the Council is

not obliged to grant him the Doctor's Registration Certificate as claimed by you."

It is not in dispute that the petitioner passed Higher Secondary examination from Tripura Board of Secondary Education in the year 1976 in 2nd Division with Physics, Chemistry and Biology following 11 years of study.

In support of the order impugned, it has been submitted by the learned counsel appearing for respondent no. 2 that for admission to BHMS Course, one requires to pass Higher Secondary Examination in 10+2 pattern following 12 years of study.

It has been forcefully urged by the learned counsel for respondent no. 2 that the petitioner has passed Higher Secondary Examination following 11 years of study and, therefore, he cannot be treated as an eligible candidate for admission in the said course.

It has been further submitted on behalf of the said Council that an ineligible candidate, if gets admission wrongfully, does not acquire any right to continue with his study and there is no place of sympathy for such an ineligible candidate.

It has also been submitted that the decision not to register the name of the petitioner as a Homoeopathy Doctor under the said Council was an academic exercise. The said Council being an expert body has

come to a finding that the petitioner was not eligible for registration under it and this Court should not sit in appeal over such a decision.

In support of such submissions, reliance has been placed on the following judgments:-

1. (2008) 17 SCC 611 (*Mahatma Gandhi University Vs. Gis Jose*)
2. (2011) 6 SCC 145 (*Abhyudya Sanstha Vs. Union of India*)
3. (2018) 12 SCC 564 (*Medical Council of India Vs. G.C.R.G. Memorial Trust*)

The only issue that falls for consideration is whether the Higher Secondary qualification of the petitioner is a valid qualification for admission to BHMS degree course.

The answer to the controversy can easily be traced to Clause 4 of Homoeopathy (Degree Course) Regulations, 1983, which provides as follows :-

“4. Minimum Qualification : No candidate shall be admitted to the B.H.M.S. (Degree) Courses unless he has :-

- (a) *Passed the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects;*
- (b) *attained the age of 17 years on or before 31st December of the year of his admission to the first year of the Course.*

(c) Blind (including colour blind), deaf and/or dumb candidates shall not be allowed for admission in the course.”

The said regulation was framed by the Central Council of Homoeopathy, respondent no.1, by virtue of powers conferred under The Homoeopathy Central Council Act, 1973.

A plain reading of the said regulation makes it clear that a candidate requires to pass “intermediate science or its equivalent examination” with Physics, Chemistry, and Biology as his subjects. Nowhere in the said regulations it has been prescribed that for the admission to BHMS degree course, a candidate will have to pass Higher Secondary Examination following 12 years of study in a 10+2 pattern.

It cannot be disputed that the 10 + 2 pattern in Higher Secondary Examination was not even introduced in the State of Tripura when the petitioner passed Higher Secondary Examination in the year 1976.

It is quite surprising that how respondent no. 2 in its affidavit before this Court, in total negation or ignorance of the applicable regulation as quoted above, sought to insist that a candidate who passed Higher Secondary Examination following 11 years of study was required to undergo a one-year pre-medical course to get admission to BHMS degree course. Such

additional condition is absolutely de-hors the Clause 4 of Homoeopathy (Degree Course) Regulations, 1983.

There cannot be any doubt whatsoever that the petitioner who passed Higher Secondary Examination from a recognised Board of Tripura following 11 years of study with physics, chemistry and biology subjects was duly qualified for admission to BHMS degree course. One cannot have any difficulty to recognise the said Higher Secondary qualification of the petitioner as “Intermediate Science” qualification in terms of the clause 4 of the Homoeopathy (Degree Course) Regulations, 1983.

This Court must take notice of the manner in which the said Council has dealt with the petitioner in refusing to register his name.

It appears that the said Council by a letter dated June 25, 2019 sought for a direction from the Central Council of Homoeopathy, respondent no.1, as to whether the petitioner should be granted registration or not.

Following the said communication, during the pendency of this writ petition, the Executive Committee of the Central Council took a decision on December 11, 2019, which reads as follows :-

“The Executive Committee considered the matter threadbare and considered the explanation of Director, NIH and information of

Tripura Board of Secondary Education as during that time Higher Secondary (old System) being the equivalent examination to Higher Secondary (10 + 2)/Intermediate examination, there is no violation of Regulation 4 of the Homoeopathy (Degree Course) Regulation 1983 (as amended from time to time) and hence he may be allowed to register in the State Register.”

Even after communication of the said decision, the learned Counsel appearing for the said Council, at the time of hearing the writ petition before this Court, is firm in its original stand that the petitioner was not eligible to register his name.

It is also pertinent to mention that the National Institute of Homoeopathy also by a letter dated October 21, 2019, intimated the Secretary, Central Council of Homoeopathy with a copy to the said Council as follows:

“ ...

As per the information obtained from Tripura Board of Secondary Education during that time Higher Secondary Education (Old System) was the equivalent Examination. So, Shi. Ajit Chandra Saha after passing the Higher Secondary Examination joined Bachelor of Science (3 years Degree Course) with Honours in the University of Calcutta. Thus, there is no illegality of violation of the Regulation 4 of the Homoeopathy (Degree Course) Regulations' 1983 of his Admission. ...”

It is also necessary to take note of the relevant part of the affidavit filed on behalf of respondent no.1,

the Central Council of Homoeopathy. Paragraph 8 of the said affidavit reads:

“ ...

It therefore transpires that, the impugned letter of 02nd September, 2019 issued by the respondent nos.2 and 3 is devoid of legal provisions and as such, the enrolment of the petitioner in the state register cannot be further withheld and denied. Furthermore, from the text and tenor of the aforesaid statutory provisions, it clearly surfaces that, the respondent no.2 and 3 has no statutory authority and power to deny the enrolment of the candidates and since, the answering respondent being the parent statutory body has come to a legal conclusion that, the petitioner's name should be registered,”

To say the least, the communication of the said Council dated September 2, 2019 is not worth the paper it is written on. The said Council has not only failed to understand the relevant regulation, it blatantly refused to follow the direction of the Central Council, being the regulation maker, to register the name of the petitioner.

It is not a simple case of failure to discharge the statutory duty by an authority, it is a display of arrogance with irresponsibility.

Such conduct cannot be approved by this Court.

Since it is found that the petitioner was an eligible candidate for the registration with the said Council, the judgments cited by the learned Counsel for respondent no.2 cannot be applied in the facts of this case.

Having regard to the facts and circumstances of the case as aforesaid, this writ petition being WPA 18950 of 2019 is allowed. The communication dated September 2, 2019 is set aside with a direction upon respondent no.2 to register the name of the petitioner within seven days from the date of communication of this order. Respondent no.2 shall also pay a cost of Rs. 25,000/- to the petitioner within the said period.

WPA 18950 of 2019 is accordingly allowed.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Kausik Chanda, J.)