

APO/19/2022
IA NO.GA/1/2022
WITH
WPO/1144/2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

DR. BAISHAKI PYNE ROY
VERSUS
UNION OF INDIA & ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 23rd December, 2022

APPEARANCE:
Mr. Surabh Guha Thakurata, Advocate
Mr. Bikash Kumar Roy, Advocate
Ms. Prabhleen Bhararra, Advocate
Ms. Nilanjana Sarkar, Advocate
. . . for the appellant.

Mr. Saibalendu Bhowmik, Advocate
Mr. Biplab Guha, Advocate
Mr. Rajsekhar Basu, Advocate
. . .for WBMC
Mr. Indranil Roy, Advocate
Mr. Sunit Kumar Roy, Advocate
. . for National Medical Commission.

The Court:- By this intra-court appeal the petitioner has challenged the order of the learned Single Judge dated 22nd December, 2021 whereby WPO 1144 of 2021 has been dismissed.

The appellant had approached the Writ Court with the plea that she had passed MBBS successfully and was registered with the West Bengal Medical Council on February 4, 1998 with a permanent registration number 54061 (WBMC). Her further case was that thereafter she had completed post graduate degree in the year 2007 in Obstetrics and Gynecology from Ryazan State I. P. Pavlov Medical University, Russia. The appellant had made an application for updation of her post graduate qualification in the registration as medical practitioner. As the same was not accepted, the writ petition was filed.

Learned Single Judge has taken note of stand of National Medical Council that Riyazan State I. P. Pavlov Medical University of the Federal Agency is not recognised by National Medical Council, therefore, question of recognizing any purported Post Graduation in Obstetrics and Gynecology does not arise. Therefore, no relief could be granted to the appellant. Accordingly, the petition has been dismissed.

Submission of the learned counsel for the appellant is that the recognition of the said degree should be granted under Section 40 of the National Medical Commission Act, 2019 and that the National Medical Council has committed an error in sending the communication dated 30th September, 2021.

Learned counsel for the NMC has pointed out that Section 40 applies to the recognition of the graduation medical degree and has also drawn attention of this Court to the proviso to Section 40 read with Section 15 of the Act which provides for National Exit Test for granting licence to practice medicine as medical practitioner and for enrolment in the State register or the National register. He has also submitted that in terms of Section 36 of the National Medical Commission Act, 2019 for recognition of a medical qualification granted by the Medical Institutions outside India, the concerned authority of that country is required to make an application to the Commission for granting recognition to such medical qualification in India.

Learned Counsel for the State Medical Council has also submitted that post graduate qualification obtained by the appellant is not recognised by the State Medical Council.

Having heard the learned counsel for the parties and on perusal of the records it is noticed that appellant is trying to set up a new case based upon Section 40 of the Act whereas in the writ petition there is no such pleading or prayer. In schedule 2 of the Indian Medical Council Act, 1956, the recognised medical qualification granted by Medical Institutes outside India are contained. Undisputedly the post graduate qualification obtained by the

appellant is not included in the said schedule. Counsel for the appellant also does not dispute that under the 2019 Act also the post graduate qualification obtained by the appellant is not covered.

That apart we also find substance in the submission of counsel for NMC that Section 40 applies to the basic medical qualification whereas Section 36 provides for recognition of medical qualification granted by Medical Institution outside India on application by the authority in the country outside India. Section 25(i) of the Act of 2019 is also to be read along with Section 36 of the Act.

In view of this, we find that no error has been committed by the learned Single Judge in dismissing the writ petition as no legal right has been pointed out by the counsel for the appellant in her favour which can entitle her to pray for direction for recognition of the post graduate degree. Thus, no case for interference in the present appeal is made out which is accordingly dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)