

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4905 OF 2021

Dr. Prachi Rane and Ors. ... Petitioners

Versus

National Medical Commission and Ors. ... Respondents

Mr. Sankalp Anantwar a/w Ms. Risha Alva i/b SMA Law Partners,
for the Petitioners.

Mr. Ganesh K. Gole a/w Mr. Ritesh Ratnam, for Respondent Nos. 1
and 2.

Mr. R. V. Govilkar a/w A. R. Gole, for Respondent No.3.

Mr. N. K. Rajpurohit, AGP, for the State.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATE : 5th APRIL, 2022.

P.C. :

Heard learned Counsel for the Petitioners, learned Counsel
for Respondent Nos. 1 and 2 and Learned AGP for Respondent
No.3-State.

2 The Petitioners are aspirants of MD (Immuno-Hematology
and Blood Transfusion) and MD (Transfusion Medicine) courses,

for which the present feeder courses are a) MD/DNB General Medicine, b) MD/DNB (Pediatrics), c) MD/DNB (Biochemistry) and d) MD/DNB (Pathology). The Petitioners desire that two more courses such as MD (Immuno-Hematology & Blood Transfusion) and MD (Transfusion Medicine) be added as qualifying courses for admission to DM (Doctorate of Medicine) in Clinical Hematology course. According to learned Counsel for the Petitioners, the qualifications such as MD in Immuno-Hematology & Blood Transfusion (IHBT) and MD in Transfusion Medicine (TM) are eminently suited for seeking admission in a super specialty course like DM (Clinical Hematology) but the Committee of Experts constituted by Respondent No.1 wrongly rejected the representation of the Petitioners made in this regard.

3 Learned Counsel for the Petitioners submits that no opportunity of hearing was granted and had it been granted to the Petitioners, the Petitioners would have been able to convince the Committee of the need for addition of aforesaid two qualifications as feeder courses for DM (Clinical Hematology) as the students possessing these qualifications, by virtue of their syllabus, acquire and possess adequate clinical expertise, knowledge and skills

requisite for pursuing the said super specialty course (DM in Clinical Hematology). He also submits that the constitution of the Committee was not proper, as none of the Members of the Committee had such qualifications as MD in Immuno-Hematology & Blood Transfusion (IHBT) and MD (Transfusion Medicine) and there was a possibility of the Members of the committee acting in a biased manner. He further submits that various points raised by the Petitioners in their representation were not considered by the Committee while taking the impugned decision.

4 Learned Counsel for Respondent Nos. 1 and 2 submits that in the earlier Petition, this Court had observed that by the very nature of things, the matter being academic, this Court can not sit in appeal over judgment of experts or issue any direction for inclusion of the courses as feeder courses and in the interest of justice, the Court called upon the Respondents (Respondent Nos. 1 and 2 here) to decide the Petitioners' representation in accordance with law. He submits that it was on the direction of this Court issued while disposing of the earlier Petition (Writ Petition No. 2517 of 2021) that Respondent No.1 constituted a Committee of renowned experts to consider and decide the representation of the

Petitioners and the committee has taken a decision considering the points raised by the Petitioner, which now cannot be assailed by the Petitioners. He submits that the Committee being expert in the matter and the issue involved being academic, there is hardly any scope for the interference in the decision of the expert committee taken in an academic matter. He further submits that it is not the case that no reasons are recorded in the impugned decision. On these grounds, he urges that the Petition be dismissed.

5 Learned Counsel Mr. Govilkar submits that this being an academic and technical matter and there being reasoned decision taken by the Committee which has not been shown to be illegal or arbitrary, no interference in the matter is warranted by this Court.

6 On going through the impugned decision and argument submitted on behalf of the Respondents, we find it difficult to accept the submissions by learned Counsel for the Petitioners.

7 As observed by this Court in the earlier Petition, in academic matters, there is very little scope for making any interference by

this Court in exercise of its powers under Article 226 of the Constitution of India, especially when the experts have taken a decision by considering all the relevant aspects. In this case, we find that the Committee has taken a review of the syllabus of two courses, namely, MD (IHBT) and MD (TM) and come to the conclusion that the exposure offered by these courses to clinical medicine is limited to the extent of applying the principles of Blood Transfusion to clinical practice and that these courses cover a very little of the core Internal Medicine training. It is further seen from the impugned decision that the Committee had made a comparative analysis of the relevant courses and found that those trained in Internal Medicine and those trained in Transfusion Medicine have much lesser knowledge and skills needed for the management of patients with the varied hematological disorders. For these reasons, Committee expressed an opinion that it would not be possible for it to recommend inclusion of M.D./DNB (Transfusion Medicine/ IHTM/ IHBT) as feeder courses for DM (Clinical Hematology) by allowing the representation.

8 Of course, learned Counsel for the Petitioners, submits that the comparative analysis and the review of the relevant courses

carried out by Committee does not disclose that it was upon due consideration of all the points raised by the Petitioners in the representation and so the decision of the Committee cannot be said to be a decision proper and as one in the eyes of law. The argument cannot be accepted for the reason that this is not something which is a *quasi judicial* proceeding where the authority taking a decision is required to take it by giving detailed reasons on point to point basis. In such matters, it is enough for the Committee of experts to take over all view of the matter and express its opinion which is what the Committee has done.

9 About giving of hearing to the Petitioners, we must say that this was not a matter where giving of opportunity of hearing to the Petitioners came as a matter of right. Giving of opportunity of hearing as a part of principle of natural justice arises naturally or rightfully when a decision having civil consequences is being taken or a person is being condemned unheard. The rationale for this principle lies in the omnibus principle, "*Audi alteram partem*". Here, the Committee was only considering as to whether or not the two proposed courses should be accepted as qualifying or feeder courses for a certain super-speciality course. The

Committee, this way, was not deciding anything which was a matter of right for the petitioners but was deciding that which was a concession; a grant; an allowance for the Petitioners. Obviously, therefore, the decision of the Committee had no civil consequences; had no effect of condemning someone unheard. So, no hearing of the Petitioners by the Committee was necessary.

10 Learned Counsel for the Petitioners has also made a submission regarding probable bias, the Committee may have nurtured in this case. We may say that there is a world of difference between probable bias and actual bias. Unless, the Petitioners show that the members of the Committee had some prejudice against them, they cannot put forward a case of bias vitiating the decision making process. The Petitioners, it appears, themselves are not sure as to whether or not the members of the Committee were actually biased against them. The argument that they make about bias is quite far-fetched as well. They say that since none of the members of the Committee possessed such qualifications as MD/DNB (TM/IHTM/IHBT) and/or MD(TM), there was a possibility of the Committee being biased against these Petitioners. The experts possessing some qualification which is

different than the qualification in respect of which eligibility is sought for opening an admission to a certain super speciality course can not by itself be the reason of bias. Something more has to be shown by the Petitioners alleging the bias, in the sense that the Petitioners must point out some previous action of any member of the Committee showing his bias against that qualification sought to be added as a feeder course for taking admission to a certain super speciality course. But, the Petitioners have failed to present to us any such demonstration. In some cases, bias can also be presumed by the very presence of a particular person on the Committee. But such presumed bias would occur only when a particular member of the Committee is found to have some personal interest in the matter under consideration of the Committee, as were the facts of the case of *A.K. Kraipak and Ors. Vs. Union of India*¹. But, that is also not the case here. Therefore, we express our disagreement to the submission made in this behalf by the learned Counsel for the Petitioners.

11 We have already found that the impugned decision is a reasoned one, although the reasons may not be so elaborate as one

¹ 1969 2 SCC 262

may expect. But, this being not a judicial or *quasi-judicial* proceeding, elaboration of reasons is not a *sine qua non*. Besides, the Committee being of experts, it is not for the Court to substitute view of the Committee, by some other view which Petitioners canvass to be possible view, unless the view taken by the Committee is perverse or arbitrary or something barred by law. This is not the case here.

12 In the result, we find that there is no merit in the Petition and the Petition deserves to be dismissed.

13 Learned Counsel for the Petitioners, at this stage, submits that the Petitioners should be given liberty to make a fresh representation to the Respondent No.1 and Respondent No.1 should be directed to consider a fresh representation after giving an opportunity of personal hearing as the Petitioners hope to convince the Respondent No.1 or its duly constituted Committee successfully. The request is opposed by learned Counsel for Respondent Nos. 1 and 2 and in our opinion, rightly so. The Committee of experts has now decided the issue upon due consideration of all relevant factors and various points raised by

the Petitioners. So, there is nothing which requires any consideration of the Committee again. The request is, therefore, rejected.

14 The Petition is, therefore, dismissed. No costs.

[G.A. SANAP, J.]

[SUNIL B. SHUKRE, J.]

**REKHA
PRAKASH
PATIL**

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