



W.P(MD)No.3913 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3913 of 2019
and
W.M.P(MD)No.3041 of 2019

Rahuma Shihaama

... Petitioner

Vs

1.The Secretary,
Medical Council of India,
Pocket – 14, Sector – 8,
Dwarka Phase – 1,
New Delhi – 110077.

2.The Assistant Director,
Medical Council of India,
Pocket – 14, Sector – 8,
Dwarka Phase – 1,
New Delhi – 110077.

3.The Assistant Secretary,
Medical Council of India,
Pocket – 14, Sector – 8,
Dwarka Phase – 1,
New Delhi – 110077.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records regarding the impugned order No.MCI-201 (EC17-23916) / 2018- Eligi. /



W.P(MD)No.3913 of 2019

103441 dated 18.04.2018 on the file of the third respondent and to quash the same and directing the first respondent to grant permanent registration to the petitioner to practice as a Doctor in India on the completion of the internship courses in India.

For Petitioner : Mr.A.J.Mohamed Kassim

For Respondents : Mrs.Subaranjini Ananth
Standing Counsel

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the Medical Council of India.

2.The writ petitioner did her schooling in India. She Joined Makerere University, Kampala, Uganda and obtained medical degree. In order to practice in India, the petitioner needed eligibility certificate from Medical Council of India. She appeared for the screening test on 22.06.2018. However, her results were not declared. Before that, she was informed by the second respondent that her candidature would be considered only on submission of the eligibility certificate. Thereafter, the impugned order dated 18.04.2018 came to be passed. The respondents informed the petitioner that the petitioner had not completed 17 years of age on or before 31st of December of the year for admission to MBBS Course. The petitioner's request for issuance of eligibility



W.P(MD)No.3913 of 2019

certificate was rejected. Challenging the same, the present writ petitioner came to be filed.

3.The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on the order dated 08.03.2018 passed by the Hon'ble Division Bench of the Rajasthan High Court in DB Special Application Writ No. 455 of 2018 (Medical Council of India Vs Thakra Ram & other). He called upon this Court to quash the impugned order and grant relief as prayed for. The respondents have filed a detailed counter affidavit and also typed set of papers. The learned Standing Counsel took me through its contents. She pressed for dismissal of the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned Standing Counsel for the Medical Council of India, the petitioner failed to obtain eligibility certificate before getting admission in the Medical Courses. My attention has been drawn to Paragraph 14 of the counter affidavit. It reads as follows:

“14. It is submitted that on 03.09.2001, the Indian Medical Council Amendment Act, was passed by the legislature incorporating certain provisions of the Act including Section



W.P(MD)No.3913 of 2019

13(4)A and 13(4)B providing for issuance of Eligibility Certificate before admissions and qualifying Screening Test after obtaining the medical qualification by the candidates coming back with medical qualification from abroad. The relevant portion is reproduced as under:-

“..... 13. RECOGNITION OF MEDICAL QUALIFICATION GRANTED BY CERTAIN MEDICAL INSTITUTIONS WHOSE QUALIFICATIONS ARE NOT INCLUDED IN THE FIRST OF SECOND SCHEDULE

1. The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

2. The medical qualifications granted to a citizen of India:-

1. before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and,

2. before the 1st day of April, 1937, by medical institutions in the territories now forming part of Burma, which are included in part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.



W.P(MD)No.3913 of 2019

3.The medical qualifications granted by medical institutions outside India, before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

4. The Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India, which is not included in the Second Schedule.

Provided that after the commencement of the Indian Medical Council (Amendment) Act, 2001, no such amendment shall be made in Part II of the Third Schedule to include any primary medical qualification granted by any medical institution outside India:

Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary



WEB COPY



W.P(MD)No.3913 of 2019

medical qualification granted by any medical institution outside India to any person whose name is entered in the Indian Medical Register.

Explanation.- For the purposes of this sub- section," primary medical qualification" means any minimum qualification sufficient for enrolment on any State Medical Register or for entering the name in the Indian Medical Register.');

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub- section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

4(B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub- section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him



by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub- section (4A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub- section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

(4C) Nothing contained in sub- sections (4A) and (4B) shall apply to the medical qualifications referred to in section 14 for the purposes of that section.

5. Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third Schedule may apply to the Central Government to have such qualification recognised and the Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part I of the Third Schedule so as to include such qualification therein, and any such notification may also



W.P(MD)No.3913 of 2019

direct that an entry shall be made in the last column of Part-I of the Third Schedule against such medical qualification declaring that it specified date.”

5.It is not open to the writ Court to issue direction contrary to law. When the legal position is clear and categorical, it is not for this Court to interfere with the impugned order when it only reflects the extant regulations and rules. Endorsing the contention advanced by the learned Standing Counsel, I sustain the impugned order.

6.At the same time, my heart goes out for the writ petitioner. The petitioner had successfully completed and obtained degree from a foreign University. She is only confronted with certain procedural impediments. It is always open to the Medical Council of India to consider relaxation of certain requirements which do not go to the root of the matter in exceptional and deserving cases. The Hon'ble Division Bench of Rajasthan High Court in the aforesaid order had held that refusal of eligibility certificate solely on the ground that the candidate had not completed 17 years of age in the year of admission to the medical courses may not be justified. The indulgence shown by the learned Single Judge was sustained and appeal filed by the Medical Council of India was dismissed. My attention has also been drawn to a few other decisions.



W.P(MD)No.3913 of 2019

7.I therefore permit the writ petitioner to submit a fresh representation before the first respondent. The first respondent shall consider the same and pass an order on merits taking into account the special facts and circumstances obtained in this case. It would be open to the first respondent to go by the decision of the Hon'ble Division Bench of Rajasthan High Court. An order on the petitioner's representation shall be passed within twelve weeks after such representation was received. I however make it clear that this liberty given to the petitioner shall not be construed as creating a fresh cause of action. Based on the decision to be taken by the first respondent, the result of the screening test shall be declared.

8.This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

01.02.2023

Index : Yes / No
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Note: Issue Order Copy on 09.02.2023.



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W.P(MD)No.3913 of 2019

G.R.SWAMINATHAN, J.

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W.P(MD)No.3913 of 2019
and
W.M.P(MD)No.3041 of 2019

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