

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE PRASENJIT BISWAS

MAT 1072 of 2023

With

IA No. CAN 1 of 2023

The Registrar,

Council for Homoeopathic Medicine, West Bengal

Vs.

Poulami Porel and Ors.

Appearance:

For the Appellants : **Mr. Debraj Bhattacharya, Adv.
Mr. Subhrojyoti Bhowmick, Adv.**

For the WBUHS : **Mr. D.N. Maity, Adv.
Mr. A. Santra, Adv.**

For the Respondent No. 2 : **Mr. Mrityunjay Chatterjee, Adv.
Ms. Debapriya Majumdar, Adv.**

Judgment On : **23.08.2024**

Harish Tandon, J.:

The candidate who was declared successful in a competitive examination i.e. the West Bengal Joint Entrance Examination in the year 2016 was admitted in BHMS Course and after successfully completed the same is denied registration with the Council of the Homoeopathic Medicine, West Bengal solely on the ground that she was ineligible not only to compete the said competitive examination but to pursue the BHMS degree course

having failed in the compulsory subject i.e., Physics though declared as a passed candidate in the intermediate examination.

Admittedly, the Respondent no. 1 passed the Higher Secondary Examination in the year 2016 with the combination of subjects i.e., the Bengali, English, Chemistry, mathematics, physics and biology as her optional subject and was admitted in the BHMS degree course having secured rank in the West Bengal Joint Entrance Examination. After completing the said degree course and in pursuit of practicing in the field of homoeopathy, she applied for her registration with the Council of Homoeopathy Medicine, West Bengal which was denied on the ground that though she passed the Intermediate Examination with the aforesaid subjects but could not secure the passing marks in compulsory subject i.e., Physics and in view of the Homoeopathy (Degree Course) Regulation, 1983 she was not entitled to be admitted in the said degree course nor entitled to get herself registered with the said Council. For the decision taken by the Council as aforesaid, the Writ Court was approached and the decision of the Council was not accepted taking into account the subsequent amendment having brought into the said regulation.

Such being an undisputed fact, discerned from the record, the Counsels appearing for the respective parties have echoed their stand which they took before the Single Bench. According to the Advocate appearing for the said Counsel, Regulation 4 of the Said Regulation of 1983 is the repository of the intention of the law framers that in order to pursue the said degree course the candidate must pass in the compulsory subject i.e., Physics, Chemistry and Biology despite having declared as a passed

candidate in the intermediate examination. Regulation 4 of the said Regulation of 1983 is relied upon by the appearing Counsels by interpreting it in a different manner. We can safely proceed to decide the point that the said Regulation of 1983 has its applicability in order to interpret the same in a meaningful and just manner. The unamended Regulation 4 of Regulation 1983 is quoted as under:

“4. Minimum qualifications: No candidate shall be admitted to D.H.M.S (Diploma) Course unless he has,

(a)Passed in the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as his subjects;”

It is evident from the said Regulation 4 that the candidate who intends to get him/her admitted in the degree course has to pass in the Intermediate science or its equivalent examination with Physics, Chemistry and Biology as subjects. The said unamended provision came up for consideration in an unreported judgment rendered by the Division Bench in MAT 2712 of 2007 decided on 19th December, 2008 on the similar and identical points and it was held that the word “no” appearing in the said regulation makes the said provision mandatory. It is further held that using both the words “no” and “shall” renders it mandatory and imperative and, therefore, authorities have to adhere to the same, ruling out any possibility of relaxation. It is further held that the inescapable conclusion to be drawn from the said unamended provision is that the candidate must pass the Intermediate Science or its equivalent examination with Physics, Chemistry and biology as subjects and

in the event the candidate do not acquire a minimum pass marks in either of such subjects, he cannot be considered as an eligible candidate to pursue the said course. The aforesaid proposition of law is reiterated in a subsequent unreported decision to which we do not feel to be dealt with it separately.

What is required in the instant case is whether the decisions rendered on the unamended Regulation 4 of the said Regulation of 1983 shall apply to the amended Regulation 4 of the Said Regulation 1983. It would be relevant and profitable to quote the amended Regulation 4 of Regulation, 1983 which runs thus:

“4. Eligibility criteria.- (i) No candidate shall be admitted to B.H.M.S Degree Course unless he has passed-

(a) the Higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years' study, the last two years of study comprising of Physics, Chemistry, Biology with 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 10+2+3 years educational structure as recommended by the National Committee on Education;

or

(b) the intermediate examination in science of an Indian University or Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject;

or

(c) the pre-professional or pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary examination, or the pre-university or an equivalent Examination, which shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject;

or

(d) the first year of the three years' degree course of a recognised University, with Physics, Chemistry and Biology including a practical test in these subjects provided examination is a University Examination and candidate has passed 10+2 with English at a level not less than a core course;

or

(e) any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University or Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English as a compulsory subject;

(ii) No candidate shall be admitted to B.H.M.S Degree Course unless he has attained the age of 17 years' on or before 31st December of the year of his admission to the first year of the course.

(iii) No candidate shall be admitted to B.H.M.S Degree Course if he is blind (including colour blindness), deaf, dumb, deaf and dumb."

[Emphasis is supplied]

On the visual comparison of both unamended and amended provision contained in Regulation 4 of the said Regulation, 1983, we find that it used the same words i.e., "no" and "shall". However, the said Regulation 4 of the Regulation 1983 has undergone a sea change and it is evident from the amended provision that horizon of its applicability has been expanded with

significant changes evident from the bare comparison of both the amended and unamended provisions. The unamended Regulation 4 of the said Regulation 1983 as interpreted in the catena of decisions including the Coordinate Bench decision leaves no ambiguity that unless the candidate passed the Intermediate Science or its equivalent examination with Physics, Chemistry and Biology as a subject, he is not eligible to undergo the said degree course. The significant change noted in the amended provision is clearly evident from the language employed therein. The amended provision appears to have applied in five eventualities. The second eventuality appearing in Clause (b) is the repletion of the unamended provision with insignificant changes to the extent that the practical test in the subjects shall also be included as a parameter. One has to ponder upon the legislative intention behind the amendment to be brought into the provisions and its expanded applicability.

The Clause (a) of the amended Regulation 4 of the said Regulations 1983 which is of a seminal importance has to be interpreted in commensurate with the legislative intent underlying such changes to be brought in the said statutory provisions. The expression “the last 2 years of study comprising of Physics, Chemistry and Biology with Mathematics or other elective subjects” appears to have invited our attention to interpret the same and to gather the intention of the framers of the law in relation thereto. The word “study” has not been defined in the said Regulation 1983 and, therefore, meaning may be safely gathered from the ordinary sense understood in the common parlance. The word “study” defined in the Oxford Dictionary as devotion of time and attention to acquire information or

knowledge, especially from books; the pursuit of academic knowledge; things worth observing closely; read (a book) attentively. Thus from the aforesaid grammatical meaning of the word “study” means to gain knowledge either from the book or otherwise and does not, in our view can be extended to a situation that such knowledge or reading has to be equated with the per excellence performance. There is no reason for incorporating the aforesaid expressions in the amended provision more particularly, when the unamended provision was unambiguous that the candidate must pass in the Intermediate Science or equivalent examination with Physics, Chemistry and Biology as subjects. We find no other reason for incorporation of the other eventualities in the said amended provisions if the intention of the legislature was laudable as sought to be contended by the appellant that the candidate must pass the Intermediate examination or its equivalent examination in all the aforesaid 3 subjects namely, Physics, Chemistry and Biology. The mandatory words i.e., the “no” and “shall” which was also appearing in the unamended provision though makes the provision imperative which in our opinion should be restricted to successfully completing the Higher Secondary examination or Indian School Certificate examination with the study of the aforesaid 3 subjects in the last two years. Any other interpretation as sought to be relied upon by the appellant would frustrate the very purpose of bringing such amendment in Regulation 4 as in our opinion the unamended Regulation 4 sufficiently took care of such stand.

There has been a changes in the stand of the various Boards, Universities and other Institutions which declares candidates as successful

in the aforesaid examination in the event such candidate could not secure the minimum pass marks in a compulsory subject by substituting the same with the elective subjects provided it secures the pass marks therein. Probably, the same has been done herein as it is nobody's case that the Respondent no. 1 was not declared successful in the Intermediate or a Higher Secondary examination. Any other interpretation would frustrate the legislative intent and would render the amended provision unworkable and/or redundant. Apart from the same, the Respondent no. 1 was permitted to participate and appear in the West Bengal Joint Entrance Examination on the basis of her marks obtained in the Higher Secondary examination or its equivalent and emerged successful therein.

As a last gasping resort after the hearing was concluded the information brochure was sought to be relied upon by the appellant wherein it is indicated that for admission, the candidate must have the individual pass marks in Physics, Chemistry and Biology. Despite the aforesaid fact the Respondent no. 1 was permitted to sit in the said examination for the reason that the amendment in Regulation 4 was brought in the meantime i.e., March, 2016 though there was no corresponding amendment in the said brochure. Apart from the same, if the regulation provides the educational eligibility criteria for admission in the medical course, the authority conducting the examination cannot act contrary thereto. We have been given to understand by the appearing Counsel that the said information brochure of 2016 is the replica of earlier information brochure issued by the West Bengal Joint Entrance Examination Board without amending the same as the amendment was brought in the Month of March, 2016 which might have

an escaped the notice of the said Board. However, the Board was conscious of such amendment and the permitted the Respondent no. 1 to appear in the examination and it is at the fag end of his educational career, the Council is taking such a point which does not appear to us have any substance. Apart from the same institution permitted the Respondent no. 1 to get admitted in the said degree course and she successfully completed the entire course having successfully acquired a degree but registration is denied by the appellant taking a plea which does not appear to be in consonance with the said amended provision. The appellant in our opinion cannot deny the registration on the basis of a degree awarded to the Respondent no. 1 by a recognized institution and therefore, we do not find any infirmity and/or illegality in the impugned judgment.

The appeal is dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with the requisites formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)

Later:

After the delivery of the judgment in open Court, learned Counsel for the appellant prays for stay of operations of the order.

We do not find any ground justifying the stay of the operation of the order as we have affirmed the order of the Trial Court and dismissed the appeal.

The prayer for stay of operation of the order is rejected.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)