

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 15995 of 2024

Dr. Joynarayan Bhoj

versus

The Union of India and others

For the petitioner	Mr. Pappu Adhikari
For the Union of India	Mr. Imran Siddique Mr. Priyankar Ganguly
For the NBEMS	Mr. Debu Chowdhury
For the respondent No.4	Mr. Sunit Kumar Roy
Last Heard on	04.09.2024
Judgment on	04.09.2024

JAY SENGUPTA, J:

This is an application challenging a decision of the respondent authorities, especially the respondent Nos.2 and 3, purportedly taken on 18.06.2024 along with e-mail dated 19.06.2024 to debar the petitioner from NEET PG 2024 Examination and for issuance of admit card for the said examination.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner had passed MBBS from a foreign university. He also cleared FMGE in 2023. However, after taking the FMGE examination and before its result could be published, he had applied for sitting at the NEET PG 2023 Examination. As he was quite sure that he would pass such examination, he had inadvertently written in the form that he had passed the FMGE Examination. A date for editing the application was provided and the same was 03.02.2023. On that date itself the petitioner actually passed the FMGE Examination. Therefore, there was no reason to edit the form and effectively, the statement made in the form was not an incorrect one. In spite of this, the respondent Nos.2 and 3, by email dated 19.06.2023, debarred the petitioner from appearing in the examination for that year. In the said e-mail it was never stated that he was being debarred from sitting in the examination for two years. After applying for this year's examination, the petitioner was informed that he allegedly had been debarred for two years. In any event, the respondent authorities are not even relying on an order to that effect. At best they are referring to a noting in their records in lieu of such decision. This cannot be treated as an order. On this, reliance is placed on the decisions of the Hon'ble Apex Court, reported at *(2009) 15 SCC 705* and *(2018) 8 SCC 215*.

Learned counsel for the respondent Nos.2 and 3 denies the allegations made in the writ petition and submits that a decision had been taken to debar the petitioner from sitting in the said examination for two years and not for a year. The respondent authorities are within their rights to take such decision. There is no fault in the decision making process.

Learned counsel for the NBEMS submits that in 2023 the petitioner was ineligible to sit for the examination not only because of any misstatement that he might have made in the application form, but also because he was not registered with the State Medical Council or the National Medical Council. However, at present he has purportedly taken such registration.

The Union of India is represented.

I have heard the learned Advocates for the parties and have perused the writ petition, the affidavits and the written notes of submissions.

In the course of hearing of this matter, this Court, as an interim measure, permitted the petitioner to sit in the examination. But, the result was directed not to be published without the leave of this Court.

First, the petitioner must be said to have been at fault in filling up the application by stating that he had passed the FMGE Examination although by that time he had only sat in the examination. Whether this is a mere manifestation of his overconfidence is quite irrelevant.

However, a last date being 03.02.2023 was purportedly provided for editing the application and the petitioner actually passed the FMGE Examination by then. As on such date, the statement contained in the application was not incorrect. Therefore, he cannot be penalised for making any false statement.

The other requirement of getting registration with the Medical Council of the State or the Centre was purportedly not satisfied, at least, for the year 2023. Subsequently, the petitioner took registration with the State Medical Council. Therefore, the petitioner is quite eligible to appear for the NEET PG 2024 Examination.

Regardless of whether the decision purportedly taken by the respondent authorities to debar the petitioner from sitting in the examination for certain number of years amounts to an “order” or not, the same was not communicated to the petitioner for all this long. What was initially communicated to the petitioner was merely that he had been debarred from sitting in

the examination for one year i.e., 2023. Such a casual approach of the respondent authorities cannot be accepted, especially when it seeks to take away a valuable year from the professional life of the petitioner.

Even otherwise, as discussed earlier, it appears that the petitioner actually did not make a false statement in the application form because on the date the application became ready for consideration, he had cleared FMGE. The only bar that had remained for him to sit for the examination was that he was not registered with a medical council exists no more.

In view of the above discussions, I set aside the impugned order of the respondent authorities debarring the petitioner from sitting in the NEET PG Examination for two years. Since the petitioner already sat in the examination for 2024, the respondent authorities shall publish the result forthwith and if the petitioner qualifies, he will be eligible for taking part in the counselling process. The respondent authorities shall take immediate steps in this regard.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J)