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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.07.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.3859 of 2024

& WMP.Nos.4164 and 19741 of 2024

M.Sujatha

... Petitioner

Vs.

1.National Medical Commission,
Rep. By its Secretary,
Undergraduate Medical Education Board,
Pocket-14, Sector-8,
Dwarka, Phase-I, New Delhi-77.

2.National Board of Examinations in Medical Sciences,
Rep. By its Chairperson,
Medical Enclave, M G Marg,
Ring Road, Ansari Nagar,
New Delhi – 110 029.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the email dated 01.02.2024 sent by the 1st respondent to the petitioner's e-mail, namely, “priyaharini221@gmail.com” and quash the same and consequently direct the 1st respondent to consider the Petitioner's Application in



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No.R-15012/26566/2023 dated 30.08.2023 for approval, and also to direct the 2nd respondent to publish the result of the FMGE examination written by the petitioner pursuant to the order of this Hon'ble Court dated 28.12.2023 in W.P.No.36021 of 2023, within a time frame as may be fixed by this Hon'ble Court.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Ms.Shubaranjani Ananth (R1)
Mr.K.Seshasayee (R2)
for Mr.V.P.Raman

ORDER

The petitioner is aggrieved by a communication dated 01.02.2024 sent by the National Medical Commission (NMC)/R1 rejecting her application for enrolling for the Foreign Medical Graduate Examination (FMGE) examination along with consequential relief to direct the NMC to publish the result of the FMGE examination written on 20.01.2024.

2. As far as the second prayer is concerned, Mr.K.Seshasayee, learned counsel for R2 has circulated a copy of e-mail dated 27.06.2024 sent by Additional Director (Medical), National Board of Examinations in Medical Sciences/R2, in compliance of a direction issued on 24.06.2024, confirming that the petitioner has not been successful in the examination written by her on



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20.01.2024. With this, the second limb of the prayer in the Writ Petition stands achieved.

3. The submissions of Mr.N.Subramaniayan, learned counsel for the petitioner are set out below:

The petitioner had written her 12th standard examination in 1994 with the core subjects of Physics, Chemistry, Maths and Computer Science. She claims to have completed a Diploma in Pharmacy in 2002. She thereafter joined the Jalal-Abad State University in Kyrgyzstan in 2016 and completed the MBBS course in 2022.

4. She applied to R1 (Application No.R.15012/022376/2022 – Regn. dated 15.07.2022) to appear for the FMGE examination and for this purpose, she claims to have approached a browsing centre for assistance in making the application. This becomes relevant for the reason that there have admittedly been manipulations in the application submitted to FMGE, which is one of the reasons why the application has come to be rejected.

5. The application filed online was accompanied by a mark sheet that contained information that the petitioner had taken Biology as a subject in school. However, the fact of the matter is that the petitioner had not taken Biology as a core subject in school at all and had studied Computer Science.



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Admittedly, the 12th standard score card had contained a manipulation, i.e., in that the word 'Biology' had been substituted for 'Computer Science'. I will dilate upon this aspect little later.

6. According to the petitioner, on coming to know that there had been manipulations in her application, she immediately filed a letter dated 13.06.2023 before R1 confirming that she had studied Physics, Chemistry, Maths and Computer Science and asking that the application be ignored. No copy of that letter has been supplied. Thereafter, she appeared for the Biology paper under the National Institute of Open Schooling (NIOS) and filed yet another application enclosing also the marksheet containing the result of the biology examination.

7. The second application was rejected vide order dated 16.08.2023 that reads thus:

The documents submitted by you were found to be forged or fabricated and inconsistent with each other in both applications, i.e., R.15012/022376/2022-Regn and R.15012/026566/2023-Regn, through the online portal. Additionally, according to the current application i.e., R.15012/026566/2023-Regn, the candidate claims to have studied Biology as an additional subject after completing MBBS in 2023, which is not acceptable under prevailing regulations. The requirement stipulates that subjects in 10+2 must be studied before pursuing an MBBS.



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8. According to the petitioner, the manipulations had not been at her instance at all and she would fully blame the person in the browsing centre for the same. That apart, the petitioner would submit that after returning from Kyrgyzstan, she had taken Biology as an additional subject in the year 2023 and with this, the initial flaw in not studying Biology, according to her, must be taken to be remedied.

9. R1, per contra, would point out Biology, as a subject, is a pre-requisite to the MBBS Course for the purposes of recognition in India. That paper ought to have been completed prior to undertaking the course for Medicine. That apart, the petitioner has also not obtained an eligibility certificate from the Medical Council of India (MCI) and this, according to R1, is a fatal flaw. The petitioner alleges discrimination stating that R1, in normal practice, permits rectification post-facto.

10. For this purpose, the Eligibility Certificate issued in the case of one Shyam Saravanan R has been produced, which according to the petitioner establishes that such certificate has been issued only after completion of the MBBS course by that candidate in Philippines.

11. That apart, the petitioner would argue that this is not a ground on which the petitioner's application has been rejected. The petitioner would then



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draw attention to Notification bearing MCI-203(9)/2001-Regn/ dated 13.02.2002 being '*Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002*', specifically Regulation 3 thereof .

12. Learned counsel for the petitioner would also submit that, while the law provides for foreign doctors to be permitted to practice in India, Indian doctors who have completed the course abroad are discriminated against, and this, according to her, is contrary to the tenets of Article 14 of the Constitution of India. To be noted, that no statutory Regulations or Rules have been provided by the petitioner in support of this argument.

13. This petitioner had earlier filed a Writ Petition in W.P.No.36021 of 2023 seeking a mandamus directing the respondents to consider the petitioner's application dated 30.08.2023 in light of Senior Secondary School Examination mark statement and certificate dated 26.09.2023 in respect of Biology subject issued by NIOS, such that she could write the FMGE 2024 examination.

14. That Writ Petition was disposed on 28.12.2023 directing R1 to enable her to register with FMGE and write the examination on 20.01.2024, though making it clear that the petitioner would not be entitled to claim equity if the NIOS certificate were not taken as valid for a medical course in India.



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15. As far as the last point is concerned, one hardly need labour thereupon, as in the case of *Srishti Nayak and another V. Union of India and others*¹, the Supreme Court has settled the position that schooling through NIOS is not a bar for enrolling for the medical course. Thus the fact that the petitioner has taken the Biology paper through NIOS would not itself stand in the way of her obtaining the relief, if she is otherwise entitled to the same.

16. The petitioner argues that the requirement for granting Eligibility Certificate is a pass in +2 with core subjects of Maths, Physics, Chemistry and Biology and that she has completed all four papers prior to seeking eligibility. There is a provision for grant of equivalence of the course, which aspect of the matter has not been looked into by R1.

17. My attention is drawn to the Medical Council of India Regulations on Graduate Medical Education, 1997, which provides for equivalence in various situations. The petitioner seeks parity relying on the following parameters:

‘4. Admission to the Medical Course – Eligibility Criteria: No candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery course until he/she has qualified the National Eligibility Entrance Test, and he/she shall not be allowed to appear for the National Eligibility-Cum-Entrance Test until:

.....

¹ order dated 15.12.2022 in W.P.(C) No.26 of 2022



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(2) *He/she has passed qualifying examination as under:*

.....

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of any Indian University/Board, taking Physics, Chemistry and Biology/Bio-technology including practical test in each of these subjects and English.'

18. Thus, according to the petitioner, any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University or Board with the subjects of Physics, Chemistry and Biology/Bio-technology including practicals shall be considered as equivalent and the petitioner would argue that the D.Pharm course completed by her should be taken to be equivalent to the intermediate degree completed by her.

19. Though in the affidavit the petitioner has claimed that the D.Pharm course contains a paper on Biology and that the D.Pharm course is 'even better' than the +2 Biology course, no materials have been produced in support of this statement though learned counsel was specifically given an opportunity in this regard.



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20. This is an alternate argument to state that even if the delayed completion of the Biology examination were to be held against her, the D.Pharm examination had been completed in 2002 and the benefit of equivalence was well available prior to the petitioner undertaking the medical course.

21. Now I come to the defence put forth by Ms.Shubaranjani Ananth, learned counsel for R1. She, first of all, assails the very basis of the petitioner's plea pointing out that the rejection of the application was for the reason that the documents accompanying the application were forged and fabricated.

22. There is no dispute on this position, as at paragraph 6 of the Writ affidavit, the petitioner has herself claimed that one Ashish Sharma in the browsing centre at New Delhi has forged her signature in Application bearing No.R.15012/022376/2022 in R1 portal. The petitioner has claimed that she had come to know of this manipulation in June, 2023 and went to R1 personally on 14.06.2023.

23. She claims to have submitted a letter to R1 in hand asking that her application bearing No.R.15012/022376/2022 be ignored. She then claims to have completed her examination in biology from the NIOS and submitted a



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second application accompanied by her credentials including the biology results.

24. The second defence raised is that the qualification of Biology has been obtained by the petitioner through NIOS only after completing the MBBS Course from Kyrgyzstan which is belated. The qualification ought to have been prior to the petitioner undertaking the course in Medicine and not thereafter. For this purpose she relies on the judgment of the Supreme Court in *Kaloji Narayana Rao University of Health Sciences V. Srikeerthi Reddi Pingle & Ors.*² and the Delhi High Court in *Raghukul Tilak V. Union of India and Anr.*³.

25. The third defence put forth is that no eligibility certificate was obtained by the petitioner prior to enrolling in the course, which is a pre-requisite for writing the FMGE examination. For this purpose, my attention is drawn to Section 13(4-B) of the Indian Medical Council Act, 1956 (in short 'IMC Act') and the Medical Council of India Regulations on Graduate Medical Education, 1997.

26. On the question of equivalence, R1 would point out that no application has been filed seeking equivalence at any point in time. The grant

² (2021) SCC Online SC 94

³ Judgment passed by the Division Bench of the Hon'ble Delhi Court in LPA.No.2033 of 2006 dated 31.05.2007



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of equivalence is a matter to be gone into by the concerned competent authority and in the absence of any application having been made by the petitioner it is not possible for the petitioner to expect the grant of equivalence without it even having sought the same.

27. I have heard the detailed submissions of all learned counsel. The Writ Petition has been listed under a special list today, as the petitioner had filed a Miscellaneous Petition seeking permission to appear again for the ensuing FMGE examination claiming that this was her last attempt. To be noted, that Ms.Ananth would seriously dispute this submission pointing out that nowhere has the petitioner stated the same.

28. Be that as it may, the petitioner has already written the examination once, unsuccessfully. The next attempt is slated to be on 06.07.2024. If at all, the Miscellaneous Petition was to be allowed, it would be subject to the result of the Writ Petition and rather than encourage such a practice, I would prefer instead to hear the matter finally and provide some resolution. It is hence that, with the consent of all parties, and in fact, at their request, that this matter has taken up and heard finally.

29. Indian students approaching Medical Colleges in the erstwhile USSR for medical education is not a new or novel situation. This scenario has been



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on-going for many years and various issues that consequently arose were considered by the Supreme Court in *Medical Council of India V. Indian Doctors from Russia Welfare Association*⁴.

30. Three Judges of the Hon'ble Supreme Court considered the concerns expressed by the Medical Council of India in regard to the genuineness of the courses undergone by the students leading to difficulties in recognition of their degrees, registration as medical practitioners and the impact that this would have on the Indian populace.

31. Several Writ Petitions were filed before the High Courts and orders passed by those Courts had been carried in appeal to the Supreme Court. Based on observations of the Supreme Court that the Government of India must formulate a proper policy to address the human problems arising in these matters, the IMC Act was amended by Act 34 of 2001 to cover the situation.

32. In terms of those amendments, the procedure that has been set out provide for issuance of eligibility by the MCI prior to the students proceeding abroad for studies in Medicine. Upon their return after completion of the courses, the candidate is to appear for a screening test, take the FMGE and, if successful, have her name entered in the register of persons qualified to practice medicine.

⁴ (2002) 3 SCC 696



33. Section 13 of the IMC Act, provides for '*Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule*'. Section 13(4-B) makes it mandatory for any person who is a citizen of India to obtain admission for medical qualification by an Institution in a foreign country, only after obtaining an eligibility certificate from the MCI. The obtaining of an eligibility certificate prior to undertaking the course is thus a statutory mandate.

34. Section 13(4-B) reads thus:

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First of Second Schedule

.....

(4B) 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 recognized medical qualification in any medical institution in India, he shall be required to qualify only



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the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

35. After obtaining of the eligibility certificate and undertaking of the course abroad, the candidate would have to appear for a screening test before the MCI. This is set out under Section 13 (4-A) of the Act that reads as follows:

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First of Second Schedule

.....

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognized 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.

36. After passing the screening test, the candidate would then be in a position to appear for FMGE examination to pave the way for entry of her name in the medical register.

37. In the present case, the petitioner has not obtained the eligibility certificate prior to undertaking the course and in the view of the Court, this is a



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fatal flaw. Instead, the petitioner claims that the regular practice of R1 is to permit eligibility certificates to be obtained after completion of course and to this end, she has circulated a certificate issued in the year 2020 (dated 25. month unclear. 2020) to one Shyam Saravanan R.

38. In that certificate, the year of admission (column 8) is stated to be 2014, the name of medical college/institution wherein admission is sought is stated as Davao Medical School Foundation, Philippines (column 9). A note at the bottom of page 2 states *'Note: This certificate is valid for taking admission in the institution mentioned in column no.9 above'*.

39. There is every indication that Shyam Saravanan.R has completed the course only in 2020, having registered for the same in 2014. Hence, and going by the date of the certificate, being dated 25. month unclear 2020, it does appear that the certificate has been issued only after completion of the course.

40. However, if that is what has transpired in that case, it is clearly contrary to the provisions of Section 13(4-A) and 13(4-B) and such an illegal order cannot be relied upon by the petitioner or taken advantage of. At best, since the eyes of the Court have now been opened, I have issued, in conclusion, a direction to R1 to ensure that such instances do not recur.



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41. Having considered the submissions on this issue, I reiterate my conclusion that, as the law requires a candidate to obtain Eligibility Certificate prior to undertaking the medical course and since this has not been done by the petitioner in this case, the rejection of the application is liable to be upheld. No doubt this is not one of the reasons for rejection. However, this requirement emanates from the statutory provisions and cannot be wished away or ignored in deciding the validity of the petitioner's application.

42. The judgment in *Kaloji Narayana Rao University of Health Sciences*⁵ also makes it clear that the study of the core subjects that are pre-requisites for the medical course must be undertaken at the first instance and this is not a remediable or curable matter. The fact that the medical college in Kyrgyzstan did not insist upon Biology cannot come to the aid of the petitioner in obtaining recognition in this Country. The admitted position is that a pre-requisite for a medical course in India is Biology at school level. Incidentally, this Court finds from the website of the Pharmacy Council of India⁶ that Biology is not a compulsory subject in the D.Pharm subject.

⁵ Foot Note supra (2)

⁶ pci.nic.in (Education Regulations 1991 - Chapter 2 - Diploma in Pharmacy (part I and II) Regulation 5 – Minimum qualification for admission to Diploma in Pharmacy)



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43. Coming to the argument on equivalence, no application has been made by the petitioner seeking equivalence and in such circumstances, I cannot find fault with R1 for not having looked into the question of equivalence. The mere mention in the application form of D.Pharm would hardly suffice and it would be asking too much of an authority to take action in regard to equivalence merely by virtue of a passing reference in the application. This argument is also rejected.

44. Though I have adverted to the legal issues in depth, I address peripherally, for the sake of completion, the issue with regard to manipulation of documents as well. This Court is hard-pressed to accept the justification put forth in regard to the manipulation of documents.

45. In the interests of clarity, I chronicle the manipulation again. The petitioner had submitted an application bearing no. No.R.15012/022376/2022 – Regn. dated 15.07.2022, accompanied with a 12th standard mark sheet wherein the words ‘computer science’ had been masked and the word ‘biology’ inserted to make it appear that the petitioner had the required eligibility.

46. This application was rejected vide order dated 16.08.2023 that reads thus:

‘Section Decision: Reject Section Remarks: The documents as submitted by you are found forged or fabricated and found



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inconsistent from each other in online portal are does not seem identical. Hence, the application stand closed/rejected.

47. The second application form bearing No.R.15012/026566/2023 –

Regn. dated 30.08.2023 came to be rejected vide order dated 01.02.2024, the contents of which have been extracted at paragraph 8 above.

48. The entire blame in regard to the admitted manipulation has been laid upon a staff of the browsing centre. This Court is entirely unconvinced as to why the staff of a browsing centre would manipulate the petitioner's application unilaterally unless instructed to do so. However, since the legal, and other substantive issues have been decided adverse to the petitioner, I see no reason to dilate upon this aspect of the matter and leave this issue at that.

49. In continuation of the observations in paragraph 36 above, there is a direction to the Medical Council of India to look into the certificate bearing No.MCI/Eligi.2020-008067 issued to Shyam Saravanan R., verify the genuineness of the same and take necessary action on the prima facie position that it has been issued post completion of the course by the candidate.

50. Such a practice is entirely contrary to Sections 13(4-A) and (4-B) of the IMC Act and must not be followed in future. Let an enquiry be initiated in this regard in regard to the certificates issued thus far and necessary action be taken in light of the extant statutory position. Learned counsel for R1 would



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also accede to this position as well as to the course of action outlined hereinabove.

51. In fine, this Writ Petition and the connected Miscellaneous Petitions are dismissed. No costs.

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Index : Yes
Speaking Order
Neutral citation: Yes
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