



W.P(MD)No.26208 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 30.04.2024

Pronounced On : 16.05.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26208 of 2023

and

W.M.P.(MD)No.22560 of 2023

N.Manikandan

... Petitioner

Vs.

1.The Chairman,
National Medical Commission,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi-110077.

2.The Secretary,
National Medical Commission,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi-110077.

3.The Director,
Under Graduate Medical Education Board,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi-110077.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the 3rd respondent in No.U.15024/10/2023-UGMEB-Pt.III/053827 dated 12.10.2023 and quash the same and subsequently directing the respondent to issue eligibility certificate, hall ticket and allow the petitioner to participate in the screening test of Under Graduate Medical Education Board which is scheduled to be held in the month of December,

For Petitioner : Mr.R.Ramsundarvijayraj

For Respondents : Mrs.Shubharanjani Anath
for R1 & R2

ORDER

Heard both sides.

2. The petitioner was born on 12.01.2001. He completed the Higher Secondary Course in March 2017. He applied to a Medical College in Ukraine and got admitted in September 2017. He joined the course on 18.10.2017 and completed the six years' medical course on 21.06.2023. When he applied for screening test to be conducted by the National Medical Commission, he was informed vide communication



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dated 12.10.2023 that his request was rejected, since he did not complete the minimum age for admission in MBBS. The petitioner was short of 17 years by 11 days. Challenging the said communication, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned communication and grant relief as prayed for.

4. The learned standing counsel for the second respondent submitted that the impugned order does not warrant interference. She drew my attention to the Graduate Medical Education Regulations issued by the Commission and contended that the candidate must have completed 17 years in the month of December in the year in which admission was sought. Since the petitioner fell short by 11 days, the petitioner's request for exemption was rightly negatived. She drew my attention to the order dated 07.09.2021 made in W.A.No.1892 of 2021 (National Testing Agency Vs. Minor SP.Shree Harini). A learned Judge



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of this Court granted relief in favour of the candidate. The National Testing Agency filed the aforesaid writ appeal and the Hon'ble Division Bench set aside the order of the learned single Judge and allowed the writ appeal. My attention was also drawn to a few other precedents by the learned standing counsel. She wanted me to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. When a similar issue was raised before me in W.P. (MD)No.3913 of 2019, I disposed of the writ petition on 01.02.2023 by permitting the petitioner to submit a fresh representation before the authority. The Hon'ble Division of the Rajasthan High Court vide order dated 08.03.2018 in Writ No.455 of 2018 (Medical Council of India Vs. Thakra Ram & other) had held that the 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 Hon'ble Division Bench sustained the indulgence shown by the learned single Judge and the writ appeal filed by the Medical Council of India was dismissed. Of-course, the Hon'ble Division Bench of the Madras High Court in W.A.No.1892 of 2021 had struck a different note. But that



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was a case relating to writing NEET (UG) 2021 examination. The case on hand is different. The petitioner had already completed the medical course. The petitioner had joined in an overseas college in the year 2017. The petitioner did not seek admission in MBBS course. He had already completed the medical course conducted by a college established overseas. He now only wants to write the screening test.

6. Though the learned standing counsel for the Medical Commission initially opposed the petitioner's request by pointing out that the petitioner had joined the overseas college without writing NEET, the said objection was not subsequently pressed. This was in view of the decision of the Hon'ble Division Bench of the High Court of Delhi rendered on 27.09.2018 in W.P.(C) 8091 of 2018 etc, (Shahul Hamed K.S and others Vs. Medical Council of India). In fact, the requirement of qualifying in NEET became mandatory even for candidates seeking admission in the overseas institutions only from the academic year 2019-2020.



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7. A learned Judge of this Court vide order dated 13.03.2020 in **W.P.No.27709 of 2018 (D.Sasirekha Vs. The Assistant Secretary)** held as follows:-

8. This Court does not find any major controversy regarding the facts of the case. It is a fact that the petitioner at the time of joining the MBBS course in Ukraine had completed only 16 years 11 months and 18 days and she had not completed 17 years as per the requirements in the regulations. The petitioner had joined the course in the year 2012 and she had applied for the eligibility certificate before the respondent only on 09.10.2013. The petitioner ultimately completed the course in the year 2018. In the meantime the respondent had rejected the eligibility certificate sought for by the petitioner through the impugned letter dated 06.04.2016.

9. The Andhra Pradesh High Court had an occasion to deal with a very similar case wherein the petitioner therein also did not complete 17 years on the date of joining and the eligibility certificate sought for by him was also rejected. Under such circumstances, the Andhra Pradesh High Court in the case of Vanama Sri Venkata Dheeraj vs. The Union of India, rep. by its secretary in W.P.No.36316 of 2015 dated 22.08.2016 held as follows:

However, vide impugned letter dated 10.09.2015, the petitioner has received communication from the respondent that as per the regulation of the Council, the petitioner has not completed the age of 17 years on or before 31st December of the year of admission, and therefore, the petitioner is not eligible to receive eligibility certificate.



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Learned counsel for the petitioner submits that a similar issue came up for consideration before a Division Bench of Allahabad High Court reported in Ankit Chaturvedi vs. Union of India and other (2014 Law Suit (all) 814) wherein, the petitioner therein was admitted to MBBS course in Universal College of Medical Sciences, Nepal in the academic year 2004-05. He did not apply and obtain the eligibility certificate from the Medical Council of India before seeking admission and pursuing his studies. An application was made by him on 16.09.2009 to the Medical Council of India for eligibility certificate after a period of four years after he was admitted to the Medical College in Nepal. But the application was rejected by the Medical Council of India on the ground that he had not completed 17 years of age on or before 31st December of the year of his admission.

The Division Bench of High Court of Allahabad while relying upon other cases, observed as under:

“In the cases of Ms. Bhagwasri Goli and other similar placed cases considered by the Board of governors in its meeting dated 27.09.2012, provisional certificate was granted despite the fact that she had not completed 17 years of age at the time of admission in MBBS course. The explanation was that she had applied and erroneously issued eligibility certificate. He case and the other cases, in which provisional registration was granted, are not similar to the case of the appellant (therein). The resolution of the board of Governors



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of Medical Council of India in its meeting dated 27.09.2012
in the matter of Ms. Bhagysri Goli is quoted as below:-

“Consideration for grant of Provisional Registration to Ms.Bhagyasri Golia and other similarly placed cases wherein provisional Registration and/or Eligibility Certificate was issued by the Medical Council of India to the candidates who did not complete the age of 17 years at the time of admission in MBBS course. The board of governors further decided that this will not be considered as precedence in future and the Eligibility Section should be careful in issuing Eligibility Certificate to the candidates and ensure that all requirements are fulfilled by the candidate (s) as per provisions of the Graduate Medical Education Regulations, 1997. The Board of Governors further decided that candidates aspiring to pursue MBBS course from Medical College/university abroad be informed that it is necessary to obtain Eligibility Certificate before proceeding for admission and they must fulfill all requirements in terms of the eligibility criteria”.

In para-18, it is opined that there was no requirement as prescribed under clause 4(1) of the Graduate Medical Education Regulations, 1997 for completing 17 years of age before applying and taking admission.

Learned counsel for the petitioner submitted that the petitioner is now going to complete 24 years of age in the month of September and he is now eligible for issuance of eligibility certificate, which does not give him the licence to



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practice. He has appeared for screening test, and if he gets admission, only thereafter, he can pursue his PG course and practice in India.

Learned Standing counsel for the respondents filed counter affidavit and contends that the present petition is contrary to the statutory, mandatory and binding regulations framed by MCI with the prior approval of the Government of India. The respondent-MCI, which is a statutory authority constituted by the Central Government under an Act of Parliament, namely, Indian Medical Council Act, 1956.

The duty of the MCI is to maintain the highest standard of medical education and, as such, the Supreme Court in case of State of Kerala vs. T.P.Roshana [(1979) SCC 580] had observed as under:

“..the Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high~powered council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-126;standard entrance qualifications for medical courses..”;

Learned Standing Counsel further submits that the Regulations of Medical Council of India have binding effect



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as has been decided by the Apex Court. Accordingly, the case of the petitioner has been rejected on the ground that he had not applied for eligibility certificate before entering education into MBBS course.

Heard learned counsel for the parties.

It is not in dispute that in certain cases, the Medical Council of India has granted exemption to the applicants for grant of eligibility certificate when they had taken admission at the age of less than 17 years. Accordingly, the High Court of Allahabad directed the respondent that the required consideration shall be made by the Board of Governors of Medical Council of India, preferably, within a period of three months.

In another judgment of Delhi High Court reported in batch of petitions, WP(C) No.18600 of 2005 in case of Jishalakshi Embrandiri and others vs. Medical Council of India and others, wherein, on a similar circumstances vide its judgment dated 05.04.2006 allowed the petition and directed the respondents to issue eligibility certificate. The cases mentioned above attained the finality as not challenged by the respondents.

This Court put a specific query to the learned counsel for the respondents that in case of Ankit Chaudary (supra) the petition therein was allowed and thereafter Jishalakshi Embrandiri (supra), as noted above was also allowed. moreover, in the other case as discussed above, Medical



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Council of India had relaxed the age and accordingly, issued the eligibility certificate.

....

In view of the above discussion and the facts and circumstances of the present case, I hereby direct the second respondent-Medical Council of India to issue eligibility certificate to the petitioner with two (2) weeks from the date of receipt of a copy of this order.

10. The judgment was taken on appeal by the Medical Council of India before the Hon'ble Supreme Court in SLP(C) No. 31683 of 2016. The Hon'ble Supreme Court, by an order dated 11.11.2016, refused to interfere with the orders passed by the Andhra Pradesh High Court and the SLP was dismissed.

11. In the present case, it is seen that the petitioner was short of 17 years only by 12 days when she joined the MBBS course. The petitioner has also completed the course in the year 2018. It will be too harsh to deny the eligibility certificate to the petitioner after the petitioner has put in so much of effort and the difference in the age was not too much and it only falls short by 12 days. For the purpose of granting this relief, the judgment of the Andhra Pradesh High Court also has a persuasive value and therefore, this court is inclined to grant the same relief to the petitioner.

12. This Court has taken into consideration the peculiar facts and circumstances and also of the fact that the petitioner had completed her course which she undertook for 6 years and she was only falling short by 12 days from the fixed age limit. Therefore,



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this judgment cannot be taken as a precedent in any other case, where a candidate falls short of the minimum age of 17 years fixed by the regulations of the Medical Council of India.

13. The Andhra Pradesh High Court, in the above judgment, had made certain observations to the effect that the minimum age limit of 17 years must be given a go bye and it should be reconsidered by the Medical Council of India. In the considered view of this Court, this observation runs contrary to the Division Bench judgment of this Court in W.A.No.1270 of 2010 dated 28.06.2011, wherein, this Court had upheld the fixation of the age limit as 17 years. To that extent, this Court is not in agreement with the observations made by the Andhra Pradesh High Court. The mandatory requirement of fixing 17 years as the minimum age for joining the MBBS course cannot be relaxed at any point of time by stating the present judgment as a precedent. This will apply to both the cases where the application was made before the admission and after the admission to the MBBS course.”

8. I am inclined to adopt the very same approach in this case also.

The petitioner in his written submission has pointed out that one S.Kamesh and V.Chandru who also joined the very same University (Uzzhord National University, Ukraine) in 2017, like the petitioner, were issued with admit cards for participating in the screening test. I am satisfied that the petitioner is identically placed and a different yardstick



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ought not to be adopted. The principle of parity is applicable in favour of the petitioner. If the petitioner had to study MBBS course in India, then obviously he would have had to write NEET and he should have fulfilled the age qualification. During the relevant time, the petitioner was not required to write NEET. The question of petitioner having to write the qualification test for joining the medical course in an overseas institution did not arise at all. The petitioner completed his six years course. If he is denied relief at this point of time, it ruin him. In similar cases, relief was granted. I do not want to take a different approach in this case. The Division Bench decision relied on by the learned standing counsel for the second respondent cannot be pressed into service because it was a case of threshold admission. The impugned order is set aside. The second respondent is directed to issue the eligibility certificate, hall ticket and allow the petitioner to participate in the screening test as and when it is held. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

16.05.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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NOTE:Issue Order Copy on 17.05.2024

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