



2024:DHC:2087



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3259/2024**

PREETI SINGH

..... Petitioner

Through: Mr. Vishal Raj Sehijpal, Mr.
Purushendra Bhardwaj, Advs., with
petitioner in person.

versus

**NATIONAL MEDICAL COMMISSION
& ORS.**

..... Respondents

Through: Mr. T. Singhdev, Mr. Bhanu
Gulati, Ms. Anum Hussain, Mr. Abhijit
Chakravarty, Mr. Aabhaas Sukramani, Ms.
Kamanpreet Kaur, Advs. for R-1.
Mr. Praveen Khattar, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
04.03.2024

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1. The petitioner passed her XII Class exam, conducted by the Central Board of Secondary Education (CBSE), in 2007. The marksheet issued by the CBSE at that stage, is reproduced thus:

Sub Code	Subject	Marks Obtained				Positional Grade
		TH	PR	Total	Total in Words	
301	English Core	052	XXX	052	Fifty Two	C2
302	Hindi core	061	XXX	061	Sixty One	C2



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043	Chemistry	023	028	051	Fifty One	D2
042	Physics	043	028	071	Seventy One	B2
049	Painting	023	064	087	Eighty Seven	B1
044	Biology	013	029	042FT	Forty Two	E
500	Work Experience					B1
502	Phy & Health Educa					C1
503	General Studies					C2

Abbreviations

AB: Absent in the subject

Result: Pass

Ex: Exempted

FP: Fail in Practical

FT: Fail in Theory

Dated: 06-08-2017

2. At the reverse of the marksheet, the following instructions by the CBSE are to be found:

“1. The grades have been awarded on a Nine-point scale as follows:

A-1 Top 1/8th of the passed candidates
A-2 Next 1/8th of the passed candidates
B-1 Next 1/8th of the passed candidates
B-2 Next 1/8th of the passed candidates
C-1 Next 1/8th of the passed candidates
C-2 Next 1/8th of the passed candidates
D-1 Next 1/8th of the passed candidates
D-2 Next 1/8th of the passed candidates
E: Failed candidates”

2(a). Maximum marks for each subject of external examination are 100. Minimum pass marks in each subject are 33%. In case of a subject involving practical work, a candidate must obtain 33%



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marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject.

3. I may also refer, in this context, to Clause 38(b) of the Scheme of Examination and pass criteria issued by the CBSE, which clarifies, similarly, thus:

“(v) For awarding the grades, the Board shall put all the passed students in a rank order and will award grades as follows:

- A-1 Top 1/8th of the passed candidates
- A-2 Next 1/8th of the passed candidates
- B-1 Next 1/8th of the passed candidates
- B-2 Next 1/8th of the passed candidates
- C-1 Next 1/8th of the passed candidates
- C-2 Next 1/8th of the passed candidates
- D-1 Next 1/8th of the passed candidates
- D-2 Next 1/8th of the passed candidates
- E Failed candidates”

4. Thus, it is clear that the petitioner has failed in her Biology paper in class XII.

5. On 9 October 2011, the petitioner applied to the Medical Council of India (MCI) for grant of an Eligibility Certificate to enable the petitioner to obtain her MBBS from the Tribhuvan University, Nepal. The application form submitted by the petitioner on that occasion has not been placed on record by the petitioner in these proceedings. The petitioner had also not placed the application form on record in W.P. (C) 12426/2023, which is a cognate petition which the petitioner has chosen to withdraw today. It has, however, been placed on record by the NMC with its counter-affidavit filed in that



case.

6. The details entered by the petitioner in respect of her performance in Class XII, in her application form for the Eligibility Certificate, may be reproduced thus:

12 th Class/Intermediate or 10+ 2 details					
• School Name & Address “Rasphil Academy, Kalyanpur, Lucknow • Board: “Central Board of Secondary Educ.”. • Roll No. 5696809 • Date of joining: July 2006 Date of passing: 06-08-2007 • School Code no. 08966					
Subjects	Maximum Marks		Marks obtained		% Result Pass/Fail
	Theory	Practical	Theory	Practical	
English	100	-	52	-	52
Physics	70	30	43	28	71
Chemistry	70	30	23	28	51
Biology	70	30	13	29	42
PCB Total	310	90	131	85	216

7. Thus, it is seen that the petitioner did *not* mention, alongside the marks obtained by her against the individual subjects in class XII, whether she had passed or failed, though the application form specifically required her to do so. In view of the applicable Regulations – to which I would presently advert – it cannot be gainsaid that, had she done so, there was no question of her having been issued the Eligibility Certificate. The Eligibility Certificate was, therefore, obtained by omitting to mention the fact of the petitioner having failed in her Class XII Biology paper, despite the application form specifically requiring her to do so.



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8. On 19 February 2014, the petitioner was issued an Eligibility Certificate by the MCI in terms of the Foreign Medical Institutions Regulations, 2002 (“the FMI Regulations” hereinafter), framed under Sections 12 and 13(4B) of the Indian Medical Council Act 1956 (“the IMC Act”), declaring her eligible to obtain a Primary Medical Qualification (PMQ) from a foreign institution.

9. Even before the Eligibility Certificate was issued, the petitioner had already travelled to Nepal. She completed her course from the Tribhuvan University, Nepal in 2022 and a pass certificate was issued by the University.

10. The petitioner returned to India and underwent the Foreign Medical Graduate Examination (FMGE), which is a pre-requisite to enable her to practice medicine in India as a Foreign Medical Graduate (FMG). The petitioner cleared the FMGE on 24 March 2023, following which the National Board of Examinations in Medical Sciences (NBEMS) issued a Screening Test Pass Certificate (STPC) to her on 24 March 2023.

11. The petitioner, thereafter, applied to the Delhi Medical Council (DMC) for being permitted provisionally to register as a practising doctor, on 25 March 2023.

12. At this stage, the DMC addressed various communications to



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the NMC requiring that the eligibility of the petitioner to have undertaken her MBBS as FMGE was required to be clarified.

13. The NMC, thereafter, issued a letter to the petitioner on 30 January 2024, and a corrigendum thereto on 7 February 2024. Specific reference was contained, in the said communications, to the CBSE guidelines which required a candidate, attempting a subject involving practical work, to obtain 33% marks in theory, 33% marks in practical and at least 33% marks in the aggregate to be treated as having qualified in that subject. Alongside, the NMC also referred to Regulation 5(5)(i) of the Graduate Medical Education Regulations 1997 (GME Regulations), which reads thus:

“In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.”

14. On the ground that the petitioner was not qualified for issue of Eligibility Certificate in the first instance, enabling her to obtain her MBBS from abroad as an FMG, the communication dated 30 January 2024 invoked Regulation 5 of the Eligibility Certificate Regulations 2002 (the EC Regulations) which permitted cancellation of eligibility certificate already granted if it was found, later, that information



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furnished by the candidate was incorrect or false, and consequent debarment, of the candidate, from appearing in the FMGE.

15. It is this communication that the petitioner has sought to challenge by way of the present writ petition.

16. Mr. Vishal Raj Sehijpal, learned Counsel for the petitioner, has submitted that the impugned letter has resulted in effacing of over 10 years of the petitioner's academic life, as it sets the clock back to a stage when the petitioner was contemplating travelling abroad to undertake her MBBS.

17. He submits that the petitioner had clearly disclosed, in her application form, while applying for grant of eligibility certificate, the marks obtained by her in Class XII. In the absence of any concealment by the petitioner, he submits that it would be completely unjust and inequitable to relegate the petitioner, at this point, to the stage when she had initially sought issuance of the Eligibility Certificate by holding that she was not entitled for issuance of the Eligibility Certificate itself.

18. Mr. Sehijpal has also drawn my attention to the second part of Regulation 5(5)(i) of the GME regulations, which reduces the aggregate qualifying marks in Physics, Chemistry and Biology taken together, in the case of candidates belonging to the Other Backward Classes (OBC) from 50% to 40%. He submits that his client is an



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OBC candidate and is, therefore, entitled to the benefit of this clause.

19. This case is eerily similar to W.P. (C) 11649/2021 (*Nitin Thomas v. NMC*), which was decided by this Bench on 13 February 2024. The similarity in circumstances is startling. In that case too, the petitioner had an “FT” (Failed in Theory) marked against his physics paper. The overall grading granted against the Physics paper in that case, too, was ‘E’. In that case, too, the petitioner did not place on record the reverse of the marksheet issued to him by the CBSE which clearly indicated that the Grade ‘E’ meant that the student had failed in that particular paper. In that case too, the petitioner did not file his application form with the writ petition. In that case, too, the petitioner, in his application form, failed to mention alongside the marks awarded to him in each of the subjects of Class XII as to whether he had passed or failed in the said subject.

20. Apart from the startling factual coincidences between that case and this, the law enunciated by this Court in *Nitin Thomas* applies to the facts of the case in hand.

21. The plaintiff was clearly ineligible for being awarded the eligibility certificate for travelling abroad to pursue her primary medical education/MBBS, as the student was required to have passed *in each of the subjects Physics, Chemistry, Biology and English*. The petitioner had failed in Biology.



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22. Mr. Sehijpal's reliance on the second part of Regulation 5 (5)(i) of the GME regulations does not help the petitioner's case.

23. The first part of Regulation 5 (5)(i) requires cumulative satisfaction of *two* criteria for a student to be entitled to grant of an eligibility certificate to pursue her/his primary medical qualification abroad. The first is that the student "*must have passed in the subjects Physics, Chemistry, Biology and English individually.*" The second is "*the student must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology*" in her/his XIIth class examination.

24. The second part of Regulation 5(5)(i) relaxes the rigour of only the *second* of the aforesaid two criteria, which is of the minimum percentage of marks required to be obtained in Physics, Chemistry and Biology taken together. While, for an unreserved candidate, the candidate is required to obtain 50% marks in Physics, Chemistry and Biology taken together, candidates belonging to the SC/ST/OBC categories would be required to obtain only 40% aggregate marks in Physics, Chemistry and Biology taken together.

25. That does not, in any manner, relax the rigour of the *first* criterion, which requires the candidate to have passed, *individually*, in Physics, Chemistry, Biology and English.

26. As I have observed in *Nitin Thomas*, no equities can be pleaded



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by the petitioner for the simple reason that she had clearly omitted to mention, in her application form while applying for grant of Eligibility Certificate whether she had passed or failed in each individual subject. The application form specifically required her to do so. It is no answer for the petitioner to contend that, with the application form, she had attached her XIIth class marksheet.

27. The requirement of the candidate having indicated, specifically against each subject, as to whether she/he passed or failed in that subject, serves a public purpose. It enables the authority issuing the Eligibility Certificate to immediately note, at a glance, whether the candidate is entitled to the Certificate. Had the petitioner, in her application form for grant of Eligibility Certificate, specifically mentioned that she had failed in the Biology paper, there was no question of the Eligibility Certificate having being issued to her in the first place. Having obtained the Eligibility Certificate by concealing this fact, the petitioner cannot plead any equities in order to seek relief from this court. The case would squarely fall, even for this reason, within the peripheries of Regulation 5 of the EC regulation as well, and the action taken by the NMC in terms of Regulation 5 cannot in any manner be faulted.

28. Little do we realize, when we commit an indiscretion, when it would come back to haunt us.

29. It is also a matter of concern that the petitioner did not choose



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to annex, with the present writ petition as also with W.P. (C) 12426/2023, the application form submitted by her at the time of applying for eligibility certificate. It is difficult for this Court to believe that this was an innocent omission. If it was an innocent omission, the NMC having placed that application form on record in the counter affidavit filed in W.P. (C) 12426/2023, the petitioner should have at the least placed the application form on record with the present writ petition. That has not been done. *Prima facie*, the omission is deliberate, in that it is not immediately apparent that the petitioner had, in her application form, omitted to mention that she had failed in her physics paper.

30. This case must, therefore, meet the same fate as visited in *Nitin Thomas*.

31. The writ petition is accordingly dismissed without any order as to costs.

C. HARI SHANKAR, J.

MARCH 4, 2024

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[Click here to check corrigendum, if any](#)