



2024:DHC:1084



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30 January 2024

Pronounced on: 13 February 2024

+ W.P.(C) 11649/2021

NITIN THOMAS

..... Petitioner

Through: Mr. Viraj Shankar Kadam, Adv.

versus

NATIONAL MEDICAL COMMISSION & ANR..Respondents

Through: Mr. T. Singhdev, Mr. Abhijit Chakraqvarty, Ms. Ramanpreet Kaur, Mr. Bhanu Gulati, Ms. Anum Hussain, Mr. Aabhaas Sukhramani and Mr. Tanishq Srivastava, Advs. for R-1

Mr. Kirtiman Singh, Mr. Waize Ali Noor, Mr. Varun Rajawat, Mr. Kartik Baijal, Mr. Varun Pratap Sigh, Ms. Shreya V. Mehra and Ms. Vidhi Jain, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

13.02.2024

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The issue

1. In terms of the Eligibility Requirement for taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 (“the FMI Regulations”, hereinafter), framed under section 12 and 13(4B) of the Indian Medical Council Act, 1956 (“the IMC Act”), the petitioner was issued an Eligibility Certificate dated 19 February 2014, by the Medical Council of India (MCI) – now the National Medical Commission (NMC) – certifying him as eligible for

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KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38



2024:DHC:1084



admission in a foreign medical institution for pursuing his graduate medical course leading to award of a Primary Medical Qualification, equivalent to MBBS in India. Said Eligibility Certificate was withdrawn by the NMC by a communication dated 26 July 2021, on the basis of which the National Board of Examination in Medical Sciences (NBEMS) by a communication dated 23 August 2021, cancelled the candidature of the petitioner to participate in the Foreign Medical Graduate Examination (FMGE) held in June 2020 and revoked the FMGE passed certificate dated 18 November 2020 issued to the petitioner.

2. Aggrieved thereby, the petitioner seeks, by means of the present writ petition, quashing of the letters dated 26 July 2021 of the NMC and 23 August 2021 of the NBEMS. Consequently, the petitioner also seeks a direction to the NMC to write to the Delhi Medical Council (DMC) to issue a provisional certificate, registering the petitioner as a medical practitioner entitled to practice medicine in Delhi.

Facts

3. Before obtaining admission in any undergraduate medical course in a foreign medical institution, a student is required to apply and obtain an Eligibility Certificate from the NMC (earlier the MCI), in terms of the FMI Regulations. After he completes a course abroad and obtains a Primary Medical Qualification/MBBS, the student has, if he desires to practice medicine in India, to pass the FMGE, also known as the “Screening Test”.



2024 : DHC : 1084



Petitioner's Class XII AISSCE results

4. The petitioner passed his Class XII examination from St. Dominic Savio's High School, Patna, which is affiliated to the Central Board of Secondary Education (CBSE). The marks and grades awarded to him by the CBSE in Class XII, as reflected on the All India Senior School Certification Examination (AISSCE) mark-sheet issued by the CBSE, were as under:-

SUB CODE	SUBJECT	MARKS OBTAINED				Positional Grade
		TH	PR	TOTAL	TOTAL IN WORDS	
301	English	092	XXX	092	Ninety Two	A1
043	Chemistry	023	029	052	Fifty Two	D2
044	Biology	034	030	064	Sixty Four	C2
049	Painting	025	059	084	Eighty Four	B2
065	Informatics Prac.	040	029	069	Sixty Nine	C2
042	Physics	011	029	040FT	Forty	E
500	Work Experience					B1
502	Phy & Health Educa					B2
503	General Studies					B1

5. It was noted that the acronym “FT” referred to “Fail in Theory”. However, the overall result of the petitioner, on the Certificate, was shown as “PASS”. Further, on the notes/instructions contained on the reverse of the mark-sheet – which has not been filed by the petitioner, but was produced by Mr. Singhdev, learned Counsel for the Respondent 1 – it has been specifically noted that the grade ‘E’ indicated that the candidate had failed that paper. For the purposes of

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Digitally Signed By: AHT
KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38

Page 3 of 27



2024:DHC:1084



grading, the general instructions relating to the “Scheme of Examination and Pass Criteria” provides, in Clause 38(v), 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”

6. It is clear, therefore, that the petitioner had failed his Physics paper in Class XII.

Application form submitted by petitioner for grant of Eligibility Certificate

7. On 1 August 2012, the petitioner applied to the MCI for grant of Eligibility Certificate to enable him to obtain his MBBS from Stavropol State Medical University (SSMU) in Russia. In the application form required him to enter the details of the marks obtained by him in various subjects in the X and XII classes, as well as whether he had passed or failed in the said subjects. In respect of his XII class performance, the petitioner entered the details as under:

Subjects	Maximum Marks		Marks Obtained		% Result Pass/Fail
	Theory	Practical	Theory	Practical	
English	100		92		92
Physics	70	30	23	29	52
Chemistry	70	30	34	30	64
Biology	70	30	11	29	40
PCB Total	210	90	68	88	52

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Digitally Signed By: AHT
KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38



2024:DHC:1084



8. Two features become immediately apparent from a comparison of the details entered by the petitioner in his application for grant of Eligibility Certificate. The first is that the marks obtained against the various subjects were completely jumbled up, with the marks obtained in Chemistry being shown as having been obtained in Physics, the marks obtained in Biology being shown as having been obtained in Chemistry and the marks obtained in Physics being shown as having been obtained in Biology. The second is that, though the form specifically required the petitioner to disclose whether he had passed or failed in the individual subjects, no such disclosure was made by the petitioner.

Eligibility Certificate dated 19 February 2014

9. On 19 February 2014, the petitioner was issued an Eligibility Certificate by the MCI in terms of the FMI Regulations, declaring him eligible to obtain a Primary Medical Qualification from a foreign institution. The details of the qualifying examination undertaken by the petitioner stand thus recorded in the Eligibility Certificate:

SUBJECT	MARKS TOTAL	MARKS OBTAINED	%	RESULT
ENGLISH	100	92	92.00	PASS
PHYSICS	100	40	40.00	PASS
CHEMISTRY	100	52	52.00	PASS
BIOLOGY	100	64	64.00	PASS
PCB TOTAL	300	156	52.00	PASS

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Digitally Signed By: AHT
KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38

Page 5 of 27



2024:DHC:1084



10. Here again, two features of the manner in which the petitioner's result in his qualifying Class XII examination are recorded in the Eligibility Certificate become apparent. The first is that the Eligibility Certificate records the petitioner as having passed in Physics, though he obtained only 40 marks and had actually failed in the subject. The second is that, though the petitioner had jumbled up his marks, *vis-a-vis* the subject in which they were obtained, in his application for grant of Eligibility Certificate, there is no such mix-up in the marks as recorded in the Eligibility Certificate. Mr. Viraj Kadam, learned Counsel for the petitioner, contended that this was a "blessing in disguise" – to use the exact expression employed by him – as it indicated that, though the petitioner had mixed up his marks in his application for grant of the Eligibility Certificate, the fact that the said mix-up was not reflected in the marks as assigned to the various subjects on the body of the Eligibility Certificate indicated that the MCI had proceeded, not on the basis of the marks obtained by the petitioner against various subjects in Class XII as entered by him on his application, but by the actual Class XII AISSCE certificate issued by the CBSE.

MBBS course and thereafter

11. Consequent on the issuance of the Eligibility Certificate by the MCI, the petitioner travelled to Russia and had himself admitted in the MBBS course in the SSMU in 2012. He completed his MBBS course from the university in June 2018 and a pass certificate was issued by the SSMU on 30 June 2018.



2024:DHC:1084



12. The petitioner returned to India and applied for being permitted to appear in the FMGE, so as to enable him to practice medicine in India as a Foreign Medical Graduate (FMG). A hall ticket was issued to the petitioner by the NBEMS, permitting him to appear in the FMGE.

13. The petitioner could clear the FMGE only on his fourth attempt in 2020, following which the NBEMS issued a Screening Test Pass Certificate (STPC) on 1 October 2020.

14. Armed with the STPC and the MBBS certificate issued by the SSMU, the petitioner applied to the DMC on 10 April 2021 for being permitted provisionally to register as a practicing doctor.

Impugned Communications

15. While his application was thus pending consideration with the DMC, the petitioner claims, to his “shock and surprise”, to have received the impugned communications issued by the NMC on 26 July 2021 and, following that, by the NBEMS on 23 August 2021.

16. These communications read as under:

Impugned communication dated 26 July 2021 issued by the NMC:

**“NATIONAL MEDICAL COMMISSION
Ethics and Medical Registration Board (EMRB)**

BY E-MAIL/ SPEED POST

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KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38



2024:DHC:1084



No. R.15012/04/2021-Regn./ 016505
26.07.2021

Dated

To

The Secretary, DMC,
Ground Floor, B Wing
Block-1 DMRC IT Park,
Shastri Park New Delhi 110053.

Subject: Withdrawn of Eligibility Certificate No. MCI-201(EC-12-11215)/2014-Eligi./(14-34808) according to Eligibility Certificate Regulation Act.2002 Section (5)

Sir/Madam

I am directed to refer to your letter No. DMC/28/2/2021/296060 dated 11 May, 2021 seeking clarification on the matter of issuance of Eligibility Certificate by Medical Council of India (MCI) to Mr. Nitin Thomas even though the candidate has failed in theory part of Physics subject. In this connection, it is to inform you that the matter has been examined in this Commission, the following is stated:

(i) That the candidate has declared himself pass in subject Physics in his application and on the basis of that, the Eligibility Certificate was issued to him. As per CBSE guidelines available on their website, a candidate attempting examination of "Subject involving practical work, a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject". However, on further examination, it is found that the candidate has not qualified/failed in the theory part of Physics subject of class 12th examination.

(ii) Further, as per section 5(1) of the Graduate Medical Education Regulation Act, 1997, which provides: - 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,

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Digitally Signed By: AHT
KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38



2024:DHC:1084



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.

Hence, he does not fulfill one of the requirement of having passed in the subjects of Physics, Chemistry, Biology & English individually.

(iii) Furthermore, as per "Eligibility Certificate Regulation Act, 2002, Section (5), Eligibility certificate, if already issued can be cancelled, the relevant portion of which states as under:

The Council shall be free to investigate on its own into the correctness of information furnished by the candidate in his/her application and/or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/she shall stand debarred from appearing in the screening test prescribed in sub-section (4A) of section 13 of the Indian Medical Council Act, 1956 without any notice. The decision of the Council in this regard shall be final.

2. In view of the above, it has been decided that Eligibility Certificate No. MCI-201(EC-12-11215)/2014-Eligi. / (14-34808) dated 19.02.2014 to Mr. Nitin Thomas is hereby cancelled and he is debarred from appearing in the screening test.

3 This is issued with the approval of President (EMRB).

Yours faithfully,
Sd.
(Rajeev Kumar)
Under Secretary

Impugned communication dated 23 August 2021 issued by the NBEMS:

**NATIONAL BOARD OF EXAMINATIONS IN MEDICAL
SCIENCES**

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Digitally Signed By: AHT
KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38

Page 9 of 27



2024:DHC:1084



(Autonomous body under Ministry of Health & Family Welfare, Govt. of India)

Ref.no. NBEMS/FMGE/51022/III/Dec-2020/5552-5553

Dated: 23/08/2021

To

Mr.Nitin Thomas,
Kailash Bhawan,
Ramkrishan Path Pirmuhani,
Patna Bihar-800003

**Subject: FMGE Pass certificate for FMGE June 2020 session
REVOKED-Regarding**

Dear Candidate,

This is in reference to your appearance in FMGE June 2020 Session against Roll no. **2011114722** conducted by the National Board of Examinations in Medical Sciences on 31st August 2021. On qualifying the FMGE screening test, the FMGE pass certificate was issued to you through Email on 18th November 2021.

It has been reported by the National Medical Commission vide its letter dated 26th July 2021 that the Eligibility Certificate No. MCI-201 (EC12-11215)/2014-Eligi. / (14-34808) dated 19.02.2014 issued to you has been cancelled and you are further debarred from appearing in the screening test.

As per clause 2.16 of the information bulletin for FMGE June 2020 session, "Candidate found ineligible at any stage of FMG Examination, will not be permitted to appear in the examination, in an unlikely event of any ineligible candidate appearing and/or passing the FMG examination, the results/candidature of such candidate shall be cancelled and/or is deemed to be cancelled, even if result has been declared or Pass Certificate has been issued".

In view of above, I am directed to inform you that your FMGE June 2020 session candidature has now been cancelled. As you have been declared ineligible for the same the FMGE pass certificate **No. NBE/DoEC/51022/June 2020/2011000711/71 dated 18th November 2020** issued to you stands **REVOKED**.

You are hereby cautioned not to present the above said certificate at any of the State Medical Council or to any other organization for

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Digitally Signed By: AHT
KUMAR WP(C) 11649/2021
Signing Date: 15.02.2024
13:35:38



2024:DHC:1084



any purpose. Further, the matter has also been reported to all State Medical Councils

Your's sincerely
Sd

Rashmi Munjal
Assistant Director (NM)
Department of Examinations

Copy to:

All State Medical Council as per list enclosed to take appropriate action in view of FMGE Pass certificate being **REVOKED.**”

17. Aggrieved by the said communications, the petitioner, as already noted, instituted the present writ petition impleading NMC as Respondent 1 and NBEMS as Respondent 2.

Rival Contentions

18. I have heard Mr. Viraj Kadam, learned Counsel for the petitioner, Mr. T. Singhdev, learned Counsel for the NMC and Mr. Kirtiman Singh, learned Counsel for NBEMS at length. Written submissions have already been filed by the petitioner and by the NBEMS.

Submissions of Mr. Viraj Shankar Kadam:

19. The submissions of Mr. Viraj Shankar Kadam for the petitioner may be enumerated thus:

(i) As a consequence of the impugned decision, the petitioner had been put back in his life by 14 years, thereby



2024:DHC:1084



annulling his entire period of education in Russia, the MBBS certificate issued to him, the FMGE Screening Test which he underwent and his ultimate success in the FMGE at his fourth attempt. This was completely unthinkable in law and would result irreparable prejudice, which could not be compensated by money or damages.

(ii) Though the petitioner had failed his theory paper in Physics is overall result, even as per the AISSCE certificate issued by the CBSE was “PASS”.

(iii) The MCI had taken two years, after the petitioner’s application, before granting him the Eligibility Certificate. Clearly, therefore, there was due application of mind of the MCI before the certificate was issued. In this context, Mr. Kadam relies on Regulations 5 and 9 of the FMI Regulations, which read thus:

“5. The Council shall be free to investigate on its own into the correctness of information furnished by the candidate in his/her application and/or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/the shall stand debarred from appearing in the *screening test prescribed* in sub-section (4A) of section 13 of the Indian Medical Council Act, 1956 without any notice. The decision of the Council in this regard shall be final.

9. After verification, as required, if the candidate is found to fulfill the eligibility criteria, the Council shall issue an Eligibility Certificate in the prescribed format to



2024:DHC:1084



the candidate certifying that he/she is eligible to join a medical institution outside India to obtain a primary medical qualification. The certificate shall indicate that on return after obtaining the foreign primary medical qualification, the candidate shall have to undergo a screening test, subject to fulfillment of the conditions prescribed in the Screening Test Regulations, 2002, and that passing this test shall only entitle him to provisional/permanent registration by the Medical Council of India or the State Medical Councils.”

(iv) Though the petitioner had, in his application form, inadvertently jumbled up the marks obtained by him in Class XII, *vis-a-vis* the subjects in which he had obtained the said marks, that inadvertent mistake did not ultimately make any difference as, in the Eligibility Certificate dated 19 February 2014, issued by the MCI, the marks were allocated against the subjects as per his AISSCE mark-sheet issued by the CBSE. In other words, the MCI had acted, not on the basis of the marks shown by the petitioner on his application form, but by the actual AISSCE mark-sheet of Class XII, issued by the CBSE.

(v) Once the MCI had taken into account the original AISSCE Class XII marks-sheet issued by the CBSE and treated the petitioner as having passed in all of the requisite papers and, therefore, entitled to the grant of Eligibility Certificate, the MCI could not, after several years, re-visit its decision and hold the petitioner not to be entitled.

(vi) In this context, the petitioner also invokes the principle of equitable estoppel, as, based on the Eligibility Certificate issued



2024:DHC:1084



by the MCI, the petitioner studied medicine for six years in Russia and obtained his MBBS degree. The petitioner, therefore, altered his stand on the basis of the Eligibility Certificate issued by the MCI. The MCI was, therefore, proscribed from revisiting the issue on the principle of equitable estoppel, for which purpose Mr. Kadam invokes paras 8 to 10, 13 to 16, 19, 22, 24 and 25 of the judgment of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd v. The State of UP*¹.

(vii) The petitioner could not be said to be at fault at any stage. Along with his application for grant of an Eligibility Certificate, the petitioner had furnished all requisite documents and provided complete information. There was no allegation of concealment, by the petitioner, of any of the required documents including his Class XII mark sheet.

(viii) All requisite documents had been produced by the petitioner, on each of the four occasions when he applied for participation in the FMG. In other words, the documents had been seen by the MCI not only at the stage when the petitioner applied for grant of an Eligibility Certificate for producing abroad, but also on each of the occasions when the petitioner applied for permission to undergo the FMGE.

(ix) Even if it were to be assumed that, initially, the Eligibility Certificate dated 19 February 2014 had been wrongly



2024:DHC:1084



issued, nonetheless, it had been issued and could not be undone.

In support of the above submissions, Mr. Kadam relies on the judgment of the Supreme Court in *Rajendra Prasad Mathur v. Karnataka University*², *A. Sudha v. University of Mysore*³, *Ashok Chand Singhvi v. University of Jodhpur*⁴ and *Chowdhury Navin Hemabhai v. State of Gujarat*⁵.

Submissions of Mr. Singhdev by way of response

20. Mr. Singhdev submits that the petitioner is entitled to no relief and in this context, advanced the following contentions:

(i) The petitioner had left for Russia even before the Eligibility Certificate was issued on 19 February 2014. This itself was irregular, as admittedly, the obtaining of an Eligibility Certificate was a pre-condition before starting the course abroad. It was not open, therefore, for the petitioner to plead equity on the ground that he had undertaken an MBBS course in Russia.

(ii) The eligibility to obtain admission to an MBBS course is covered by the Graduate Medical Education Regulations, 1997 (“the GME Regulations”, hereinafter). Regulations 5(5)(i) of the GME Regulations read thus:

² (1986) Supp SCC 740

³ (1988) 1 SCR 368

⁴ (1989) 1 SCR 230

⁵ (2011) 2 SCR 1071



“(5) Procedure for selection to MBBS course shall be as follows:-

- i) 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/Bio-technology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology/Bio-technology 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.”

Passing of Physics, Chemistry, Biology and English individually is, therefore, a prerequisite for eligibility to undertake an MBBS course. Apart from this, an overall minimum 50% in Physics, Chemistry and Biology in the Class XII examination, taken together, is also required. The eligibility criteria for undertaking the MBBS course, as contained in Regulation 5(5)(i) of the GME Regulations were incorporated by reference into Regulation 8 of the FMI Regulations, which read thus:

“8. The Council shall consider the application for Eligibility Certificate and verify the following details as per the Regulations of the Council—

- (i) Whether the candidate fulfills the age criterion prescribed by the Council?
- (ii) Whether the candidate fulfills the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997, *i.e.*, minimum qualifying marks criteria in Physics, Chemistry, Biology and English,



including relaxed criteria in case the candidate belongs to a reserved category?

(iii) If the candidate belongs to SC/ST/OBC, whether he/she has produced a caste certificate from a Competent Authority?"

The petitioner was clearly in default of the requirement of having individually passed in Physics, Chemistry, Biology and English, as he had failed his Physics paper in Class XII.

(iii) Regulation 5⁶ of the FMI Regulations empowers the NMC to, at any stage subsequent to the grant of the Eligibility Certificate, cancel the same, if it was found that the information furnished by the candidate, on the basis of which the certificate was issued, was incorrect or false.

(iv) Regulation 4(2)⁷ of the Screening Test Regulations proscribed any person from appearing in the screening test, consequent to obtaining of the Primary Medical Qualification from abroad unless the candidate had obtained an Eligibility Certificate from the MCI as per the FMI Regulations. Inasmuch as the petitioner was not entitled to the Eligibility

⁶ 5. The Council shall be free to investigate on its own into the correctness of information furnished by the candidate in his/her application and/or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/she shall stand debarred from appearing in the screening test prescribed in sub-section (4A) of Section 13 of the Medical Council Act, 1956 (102 of 1956) without any notice. The decision of the Council in this regard shall be final.

⁷ 4. **Eligibility Criteria:** No person shall be allowed to appear in the screening test unless:

(2) he/she had obtained 'Eligibility Certificate' from the Medical Council of India as per the 'Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002'. This requirement shall not be necessary in respect of Indian citizens who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002.



2024:DHC:1084



Certificate, he was not entitled to appear in the FMGE either, by virtue of Regulation 4(2) of the Screening Test Regulations 2002. In this context, Mr. Singhdev cites the judgment of the Division Bench of this Court in *Rohinish Pathak v. Medical Council of India*⁸, the Special Leave Petition preferred against which was dismissed by the Supreme Court on 15 November 2021.

(v) An overall grade awarded to the petitioner against his Physics paper in Class XII was E. Clause 38 (v) of the Scheme of Examination and Pass Criteria of the CBSE clearly indicated that the candidate, who obtained grade “E”, had failed in that paper. As such, the petitioner could not seek to contend that he had passed his Physics paper even in the practical.

(vi) Along with his application for obtaining the Eligibility Certificate, the petitioner subscribed to, and signed the following declaration:

“DECLARATION

I declare that the entries made by me in this Form are true to my knowledge and I understand that I am liable for action under the law for any false information or document produced by me without any notice from MCI, New Delhi.

I also understand that the Medical Council of India shall be free to investigate on its own into the correctness of information furnished by me in this application and/or call for any further information in this regard from me and in the event of any information furnished by me being



2024:DHC:1084



found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and I shall stand debarred from appearing in the Screening Test prescribed in Sub-Section(4A) of Section 13 of the Indian Medical Council Act, 1956 and any other rule and regulation framed by MCI, New Delhi without any notice.

I understand that after obtaining the foreign recognized primary medical qualification, and subject to the verification as contained above, I have to pass a screening test prescribed under the Indian Medical Council Act, 1956 read with the Eligibility Requirement for taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 and the Screening Test Regulations, 2002 before grant of provisional/permanent registration by the Medical Council of India or any of the State Medical Councils.

Sd.

(Signature of Candidate)

Name: Nitin Thomas

Place: Patna

Date: 1/8/2012"

(Emphasis supplied)

(vii) The Eligibility Certificate dated 19 February 2014 also contained the following specific disclaimer:

"This is to certify that as per the particulars/documents and the declaration submitted by candidate Mr./Ms. NITIN THOMAS S/o/D/o. NEDUMTHARA THOMAS he/she is eligible to apply for admission in a foreign medical institution for pursuing/graduate medical course leading to 'Primary Medical Qualification' as per Eligibility Requirement for taking Admission In Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 equivalent to MBBS in India in Medical institution abroad as per Screening Test Regulations, 2002. This certificate is subject to the following (i) his/her fulfilling the eligibility criteria as per MCI Regulation on Graduate Medical Education, 1997 Screening Test Regulations, 2002 as amended in 2009. (ii) fulfilling other conditions prescribed by such foreign medical institute and the university with which such institution is affiliated (iii)

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Digitally Signed By: AHT
KUMAR
Signing Date: 15.02.2024
13:35:38

WP(C) 11649/2021

Page 19 of 27



2024:DHC:1084



his/her possessing valid passport with other travel documents.”

(xii) The following note also figured on the body of the Eligibility Certificate:

“1. This eligibility certificate is issued exclusively on the basis of information/documents and declaration furnished by the applicant along with his/her application form, pending authentication by the authorities concerned.”

21. In these circumstances, Mr. Singhdev submits that the petitioner is completely disentitled to relief and cites, in his support, paras 1, 71, 72, 92, 94 and 97 of the judgment of the Supreme Court in *Nidhi Kaim v. State of Madhya Pradesh*⁹, paras 3, 48, 66 and 68 of the judgment of the Supreme Court in *CMD, FCI v. Jagdish Balaram Bahira*¹⁰ and para 6 of the judgment in *MCI v. Indian Doctors from Russia Welfare Association*¹¹.

22. Mr. Singhdev also sought to distinguish the authorities on which the petitioner places reliance.

Submissions of Mr. Kadam in rejoinder

23. Mr. Viraj Kadam, in his rejoinder, sought to distinguish the judgments on which Mr. Singhdev had placed reliance. *Rohinish Pathak*, he submits, is a case in which the request for grant of an Eligibility Certificate was rejected thrice. Other decisions either

⁹ (2017) 4 SCC 1

¹⁰ (2017) 8 SCC 670

¹¹ (2002) 3 SCC 696



2024:DHC:1084



related to manifest fraud, such as the Vyapam scam in Madhya Pradesh or of deviation from the centralized admission process.

24. As a concluding salvo, Mr. Kadam submits that the indiscretions of the petitioner, if any, at the stage of issuance of Eligibility Certificate in 2014, had resulted in no prejudice to the respondents, as the petitioner had admittedly undertaken the MBBS course and had also passed the FMGE Screening Test. His qualification or competence to practice medicine in India could not, therefore, be questioned.

Analysis

25. It is not possible to grant any relief to the petitioner.

Petitioner not entitled to Eligibility Certificate under Regulation 8 of the FMI Regulations read with Regulation 5(5)(i) of the GME Regulations

26. Regulation 8 of the FMI Regulations specifically requires a candidate, who desires to undertake his MBBS course abroad, to fulfil the eligibility criteria for admission to the MBBS course in India, as prescribed in the FMI Regulations. Regulation 5(5)(i) of the GME Regulations requires the candidate to have passed in the subjects of Physics, Chemistry, Biology and English individually, apart from having obtained a minimum of 50% marks in aggregate in Physics, Chemistry and Biology in the qualifying examination. The qualifying examination, admittedly, is the Class XII examination undertaken by



2024 : DHC : 1084



the candidate.

27. In his Class XII Physics paper, apart from having individually failed in the theory paper, the petitioner was overall graded E. The grade E, as per the Clause 38(v) in the Scheme of Examination and Pass Criteria, denotes that the candidate has failed the paper. As such, the petitioner had, in the present case, clearly failed his Physics paper and was, therefore, not eligible for admission to the MBBS course, or, consequently, for being granted permission to obtain the MBBS degree from a foreign institution.

Misstatement and concealment in application form

28. That apart, the petitioner has resorted to misstatement in the application filed by him for obtaining permission to travel aboard to undertake the MBBS. The marks obtained by the petitioner in his Chemistry paper were shown as the marks obtained in Physics, the mark obtained in Biology were shown as marks obtained in Chemistry and the marks obtained in Physics were shown as marks obtained in Biology.

29. Besides, though the admission form specifically required the petitioner to indicate whether he had passed or failed in the paper, this was not done. As a result, while the marks for the individual subjects were jumbled up, there was no indication, though it was explicitly so required in the application form, whether the petitioner had in fact passed or failed in the Physics, Chemistry, Biology and English papers



2024:DHC:1084



individually. Had the petitioner entered the said details, it would have become apparent that the petitioner had failed in Physics. Worse, it would also become apparent that the petitioner had entered wrong marks against his Physics paper.

30. The Court cannot presume that all these omissions and irregularities were innocent.

Re. contention that errors in application form not reflected in the Eligibility Certificate

31. Somewhat surprisingly, Mr. Kadam, learned Counsel for the petitioner, sought to contend that though the petitioner might have been negligent in filling up his application form, the erroneous details contained in the application form did not finally impact the Eligibility Certificate dated 19 February 2014 issued by the MCI, as the details of the marks obtained by the petitioner in his Class XII examination in English, Physics, Chemistry and Biology were correctly entered in the said Eligibility Certificate. This, according to Mr. Kadam, indicates that MCI, while issuing the Eligibility Certificate, went by the actual Class XII AISSCE certificate issued by the CBSE and not by the erroneous details entered by the petitioner in the application form.

32. The submission is truly surprising. It can hardly lie in the mouth of the petitioner to contend, having resorted to misstatement and suppression in his application form, that the Court should turn a blind eye to it, as the misstatement and suppression ultimately did not influence the issuance of Eligibility Certificate by the MCI.



2024:DHC:1084



Declaration filed with Application Form

33. The petitioner had, in fact, subscribed to a declaration, along with his application for obtaining the Eligibility Certificate, which empowered the MCI to, at a subsequent stage, cancel the Eligibility Certificate issued, if the information furnished in the certificate was found to be erroneous. The petitioner entered the above incorrect details in his application form in full awareness of the consequences of making false declaration. He cannot, therefore, now plead equities in his favour.

Regulation 5 of the FMI Regulations

34. The entitlement of the MCI/NMC to cancel the Eligibility Certificate at any subsequent stage, if it was found that the information furnished by the candidate was incorrect or false, also stands preserved by Regulation 5 of the FMI Regulations. The details contained in the Application Form submitted by the petitioner for obtaining his Eligibility Certificate were clearly false. He also resorted to suppression by failing to declare whether he had passed/failed in the individual subjects which, had it been declared, would certainly not have resulted in his being issued the Eligibility Certificate. The Eligibility Certificate was, therefore, obtained by him by suppression and misstatement, and no equities can prevail in allowing him to continue to reap its rewards.



2024:DHC:1084



Rule 4(2) of Screening Test Regulations – Inability to appear in the FMGE

35. Rule 4(2) of the Screening Test Regulations clearly proscribes any person appearing in the FMGE unless he, or she, had obtained an Eligibility Certificate from the MCI *as per the FMI Regulations*. The expression “as per” has been defined in P. Ramanatha Aiyar’s Law Lexicon (6th Edition) as “in accordance with; in accordance with the terms of; according to”. Accordance with the terms of the FMI Regulations is, therefore, the unavoidable *sine qua non* for the Eligibility Certificate to be regarded as having been obtained *as per* the FMI Regulations.

36. The Eligibility Certificate of the petitioner is admittedly violative of the FMI Regulations, and liable to be cancelled in terms of Rule 5 thereof. Per sequitur, the petitioner was not, even for this reason, eligible to undertake the FMGE either.

Disclaimer in Eligibility Certificate

37. Besides, the Eligibility Certificate dated 19 February 2014 also contained a specific disclaimer, rendering it subject to the fulfilment, by the petitioner, of the eligibility criteria as per the GME Regulations and the Screening Test Regulations 2002. The petitioner admittedly does not fulfil the criteria for travelling aboard to pursue his MBBS course as envisaged by Regulation 5(5)(i) of the GME Regulations. As such, the cancellation of the petitioner’s eligibility certificate was also in terms of the disclaimer which was entered in the body of the



2024:DHC:1084



eligibility certificate itself.

Suppression and concealment from this Court

38. The petitioner has also been less than economical with the truth before this Court. The petitioner has not placed on record the specific instruction by the CBSE at the reverse of the petitioner's Class XII marksheets, to the effect that the grade E indicated that the candidate had failed the paper. On the other hand, he has sought to portray, in the writ petition, that he had passed in all papers and had merely failed the Physics Theory paper.

39. Nor did the petitioner even condescend to place on record his Application Form dated 1 August 2012, filled by him while applying for grant of the Eligibility Certificate, *prima facie* because the form would have disclosed that there were major misstatements and suppressions made by the petitioner therein.

40. Clearly, therefore, the petitioner has not approached this Court with clean hands. He has, by his own acts, placed himself outside the equitable reach of the arms of this Court under Article 226 of the Constitution of India.

41. The decision in *Motilal Padampat Sugar Mills* was rendered in a tax case and dealt with the principle of a promissory estoppel against the government against denying exemption to the appellant from sales tax for sales of *vanaspati*, despite the appellant being entitled to the



2024:DHC:1084



said exemption. It has clearly no application to the facts of the present case. Other cases do not cover instances in which the petitioner resorts to rank misstatement and suppression while obtaining the benefits that he seeks to preserve, far less cases in which the petitioner has concealed from the Court as well.

Conclusion

42. For the aforesaid reason, the present petition is completely devoid of merits. It is accordingly dismissed, with no order as to costs.

C. HARI SHANKAR, J.

FEBRUARY 13, 2024

rb/dsn

Click here to check corrigendum, if any