



\$~37

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 777/2024 & C.M. APPL. 45967-68/2024**

DR. PRIYANSHU RAJ

.....Appellant

Through: Mr. Harshvir Pratap Sharma, Senior Advocate with Mr. Paras Joshi, Ms. Urvashi Bhatia, Mr. Akul Krishnan, Advocates.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Kirtiman Singh with Mr. Waize Ali Noor, Mr. Varun Rajawat, Mr. Ranjeev Khatana, Mr. Varun P. Singh, Mr. Kartik Baijal and Mr. Maulik Khurana, Advocates for R-2 & 3.

Mr. T. Singhdev with Mr. Aabhaas Sukhramani, Mr. Abhijit Chakravarty, Ms. Anum Hussain, Mr. Bhanu Gulati, Mr. Tanishq Srivastava, Mr. Sourabh Kumar, Ms. Ramanpreet Kaur, Advocates for R-4/NMC.

%

Date of Decision: 09th August, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been taken up for hearing on the special mentioning by the learned counsel beyond the Court hours. With the consent of the learned counsel for the parties, the appeal is taken up for final disposal keeping in view the nature of urgency as projected.

2. This appeal has been filed challenging the order dated 8th August,



2024 passed by the learned Single Judge in W.P.(C) 9404/2024 whereby the learned Single Judge upheld the emails dated 18th June, 2024 and 20th June, 2024 sent to the appellant by respondent no.2- National Board of Examinations Medical Sciences (NBEMS) debarring the appellant from appearing in the National Eligibility cum Entrance Examination (Post-Graduate) Examination, 2024 (NEET PG) scheduled for 11th August, 2024.

3. Mr. Harshvir Pratap Sharma, learned senior counsel for the appellant states that the appellant had completed his MBBS from the Tribhuvan University, Kathmandu, Nepal in the year 2021. He states that the appellant had also successfully completed his compulsory rotatory internship in 2022. He further states that the appellant, considering himself to be eligible, *albeit* mistakenly, filled the application form for NEET PG 2023 in the month of January, 2023. He states that the said form was to be submitted between 7th January 2023 and 27th January 2023. He submits that however, the result of Foreign Graduate Medical Examination (FMGE) of December, 2022 was announced on 3rd February, 2023, after filling up of the application form of NEET PG 2023.

4. Learned senior counsel states that on the date of issuance of admit cards for NEET PG 2023, the appellant received an email dated 05th June, 2023 from respondent no.2 in which appellant was issued a Show Cause Notice and an unfair means case was registered against the appellant on the ground that he had failed to disclose that he had not cleared the Foreign Graduate Medical Examination (FMGE) as well as that he had not been registered with the National Medical Council or the State Medical Council at the time of filling up the form for NEET PG 2023, which were the prerequisites. He states that on 8th June, 2023, the appellant replied to the said Show Cause Notice stating that it was a *bonafide* mistake, for which



he apologised and assured that such mistake would not be repeated in the future. He further states that on 07th August, 2023, the appellant was informed *vide* email that his candidature for NEET PG 2023 has been cancelled.

5. He states that on 16th April, 2024, respondent no.2 invited applications for NEET PG 2024, pursuant to which, the appellant duly submitted his application. He states that on the date of issuance of admit cards, the appellant received an email dated 18th June, 2024 from respondent no.3 intimating that in continuation of the previous punishment, they have decided to debar the appellant for NEET PG 2024 for the offence committed in NEET PG 2023. He states that the appellant raised a grievance on the online communication portal of respondent no.2 on 18th June, 2024. He states that the respondent no.3 reiterated *vide* email dated 19th June, 2024 that his candidature for NEET PG 2023 has been cancelled and the appellant has been debarred from NEET PG 2024.

6. He states that the appellant has already suffered and undergone the penalty imposed by respondent no.2 in its decision dated 07th August, 2023 *vide* which the candidature of the Appellant for NEET PG was cancelled only for 2023 and thus, the appellant is fully entitled to appear in NEET PG 2024.

7. He contends that in the email dated 07th August, 2023, it was nowhere mentioned that the appellant would not be entitled to sit for NEET PG 2024.

8. He further states that in WPA No. 15995 of 2024, the High Court of Calcutta has extended protection to a similarly placed candidate, who was also misled by the respondents herein *qua* the terms of his punishment for unfair means and was allowed to appear for the NEET PG 2024 subject to



final disposal of the writ petition.

9. Having heard the learned senior counsel for the appellant and having perused the paper book, this Court finds that the alleged misinformation by the appellant in his application for admission to NEET PG 2023 is a serious one. The relevant extract of the Application Form of the appellant for NEET PG 2023 is reproduced herein below:-

“

Medical Council Registration Details

<i>Medical Council Registration Type</i>	<i>Medical Council Registration Number</i>	<i>Name of Medical Council</i>
<i>PROVISIONAL</i>	<i><u>42417092015</u></i>	<i>Others</i>

***Other Medical Council
Tribhuvan University***

FMG EXAMINATION MARKS

<i>Marks obtained in Foreign Medical Graduate Examination (FMGE)/Screening Test conducted by NBEMS (Out of 300)</i>	<i>Year of Passing FMGE</i>	<i>FMGE Roll Number</i>
<i><u>183.</u></i>	<i><u>06/2022</u></i>	<i>2211226922</i>

10. From the aforesaid, it is apparent that the appellant has given false registration number, month as well as the year of his passing the FMGE, his marks in the said examination and the name of the Medical Council with whom he was registered. This Court has perused the records of the case and finds that the appellant, in the Column “*Name of Medical Council*” has filled “*Tribhuvan University*”, which apparently is the University from where he obtained his MBBS Degree and not the Medical Council in Nepal. The “*Medical Council Registration no.42417092015*” as furnished by the appellant in the said application form also appears to be



false as no such certificate of registration at Medical Council of Nepal has been filed. It appears to be a deliberate and wilful attempt on the part of the appellant to mislead the respondents. To say the least, misrepresentation by the appellant is a serious one.

11. This Court also finds that the Examinations Ethics Committee of the Respondents *vide* Minutes of the Meeting dated 13th June, 2023 had unanimously decided to impose the penalty of debarring the appellant as well as similarly placed candidates from appearing '*in the next NEET PG examination conducted after the NEET-PG in which the offence has been committed*'. Consequently, the Examinations Ethics Committee had taken a decision to debar the appellant and other similarly situated candidates from appearing in the NEET PG Examination not only for the year 2023 but also for the next year i.e. 2024.

12. This Court is further in agreement with the view of the learned Single Judge that though there was a miscommunication on the part of NBEMS in communicating the decision of the Examinations Ethics Committee through the email dated 07th August, 2023, yet the same being contrary to the decision of the Examinations Ethics Committee cannot be relied upon by the appellant.

13. Moreover, when the Court looks at the '*big picture*', it finds that the alleged misinformation (at page 462 of the paper book), as quoted hereinabove, is not an innocent or minor mistake. It borders on criminality.

14. Learned senior counsel for the appellant had weakly and as a desperate attempt tried to draw distinction between the appellant's case and that of Savalia Rajan, the appellant whose appeal bearing LPA No.775/2024 was dismissed by this Court on identical grounds. He states that the appellant was in fact registered with the Medical Council in Nepal



and thus, was entitled to participate in the NEET PG 2024. The said argument was dealt with by the learned Single Judge in para 29 of the impugned judgement which is extracted hereunder:

“...29. Further, the contention of the learned counsel for the petitioner that the petitioner was not required to register himself with either Medical Council of India or any State Medical Council since he was registered with concerned Medical Council of Nepal is also devoid of merit as she could not produce any document in support of her contention whereas the learned counsel for the respondent has drawn this Court’s attention to Clause 4.10 of Information Bulletin of NEET (PG)-2023 which reads as under:

“ELIGIBILITY CRITERIA FOR FOREIGN MEDICAL GRADUATES: Indian citizens or overseas citizens of India who have obtained their Primary Medical Qualifications from Medical Colleges outside India should have qualified the Foreign Medical Graduate Examination (Screening Test) as per Screening Test Regulations, 2002 which is conducted by National Board of Examinations in Medical Sciences. Further, they should have been registered with the NMC/ the erstwhile Medical Council of India or State Medical Council and should have completed their internship or likely to complete their internship on or before 31st March 2023.”...”

15. Clause 4.10 in this regard is very clear, in that, it makes it mandatory for the Indian or overseas citizens of India who have obtained their Primary Medical Qualifications from Medical Colleges outside India to qualify the FMGE and to register with the National Medical Council/the erstwhile Medical Council of India or State Medical Council. Thus, the argument of the appellant of having fulfilled the eligibility condition by registering with the Medical Council of Nepal does not stand to reason.

16. Moreover, reliance is also placed on Section 34 of the National



Medical Commission Act, 2019 by the learned counsel for respondent no.4, which is extracted hereunder:

“34. Bar to practice.

(1) No person other than a person who is enrolled in the State Register or the National Register, as the case may be, shall-

(a) be allowed to practice medicine as a qualified medical practitioner;

(b) hold office as a physician or surgeon or any other office, by whatever name called, which is meant to be held by a physician or surgeon;

(c) be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) be entitled to give evidence at any inquest or in any court of law as an expert under Section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine:

Provided that the Commission shall submit a list of such medical professionals to the Central Government in such manner as may be prescribed:

Provided further that a foreign citizen who is enrolled in his country as a medical practitioner in accordance with the law regulating the registration of medical practitioners in that country may be permitted temporary registration in India for such period and in such manner as may be specified by the regulations.

(2) Any person who contravenes any of the provisions of this section shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to five lakh rupees or with both.”

17. It is clear from the above that an aspirant for NEET PG Examination would not only have to clear the FMGE but also be registered with scheduled State Medical Council or other Institutions as required. Considering the aforesaid aspects, we concur with the findings of the learned Single Judge in Para 29 of the impugned judgement.

18. This Court has already noted in the preceding paragraph that the



Medical Council Registration number appears to be false and no document worth its salt has been filed by the appellant in that context. In such bald circumstances, this Court is unable to see any merit in this submission and the same is rejected.

19. The reliance by the learned senior counsel for the appellant on the judgement of the Supreme Court in *Shri Krishnan vs. Kurukshetra University, Kurukshetra, 1976 1 SCC 311* is misplaced. In that case, the appellant had been permitted by the authorities to appear in the examination, though he was not eligible. Later on, the authorities sought to cancel the candidature on scrutinizing his application and finding the appellant therein, ineligible. It was in that context the Supreme Court held that the authority could not subsequently withdraw his candidature and permitted the appellant therein to appear for the examination, predicated on the ground of acquiescence of the authority. However, in the present appeal, the respondent has rejected the NEET PG 2023/2024 application of the appellant at the threshold itself. Thus, the said judgement has no application to the facts of this case.

20. Consequently, this Court finds no ground to interfere with the impugned judgment. Accordingly, the appeal is dismissed along with the pending applications.

21. It is clarified that if the appellant is eligible to sit in the next NEET PG Examination, he shall be allowed to appear in the said exam in accordance with law.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 09, 2024/rl

Signature Not Verified

Digitally Signed
By: MADHU KARDANA
Signing Date: 12.08.2024
16:39:19

LPA No. 777/2024