

**AFR****Court No. - 39****Case :- WRIT - C No. - 46218 of 2013****Petitioner :-** Pratik Singh**Respondent :-** Union Of India Thru Secy. And Another**Counsel for Petitioner :-** Kamlesh Shukla ,R.P. Upadhayay, Shagun K. Saran**Counsel for Respondent :-** A.S.G.I., Akhilesh Kumar Misra, S.C., Santosh Kumar Shukla**Hon'ble Dilip Gupta,J.****Hon'ble Prabhat Chandra Tripathi,J.****(Delivered by Hon'ble Dilip Gupta, J.)**

This petition has been filed for a direction upon the respondents to declare the result of the Screening Test in which the petitioner had appeared in India after obtaining the MBBS Degree from a Medical Institution outside India, without requiring the petitioner to submit the 'Eligibility Certificate'. It was necessary for the petitioner to qualify the Screening Test for enrollment in the Medical Register maintained by the State Medical Council. The petitioner, however, also applied for issuance of the Eligibility Certificate but the application was rejected by order dated 7 October 2012. The petitioner has, accordingly, sought the quashing of this order dated 7 October 2012 also.

The application filed by the petitioner for grant of Eligibility Certificate has been rejected for the reason that the petitioner had not studied Biology subject in both Class XI and Class XII before appearing at the Intermediate Examination in 2003 which was a requirement set out in the 'Regulations on Graduate Medical

Education, 1997¹. The order dated 7 October 2012 rejecting the claim of the petitioner for grant of the Eligibility Certificate is reproduced below:-

“After scrutiny of the application it is observed that you have passed your 11th class from RET Inter College, Dayal Bagh with Hindi, English, Physics, Chemistry and Mathematics and 12th Class Qualification from Uttar Pradesh Board of High & Intermediate Examination in the year of 2003 with English, Chemistry and Physics.

Since you have not studied the subject of Biology in both examinations, you do not fulfill the requirements for admission to the Medical Course as per GRADUATE MEDICAL EDUCATION REGULATIONS, 1997.

No candidate shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

1. He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course.

2. He/she has passed qualifying examination as under:-

1. The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.”

The petitioner had appeared at the Intermediate Examination conducted by the Board of High School and Intermediate Education, Uttar Pradesh² in 2003 with General Hindi, English, Mathematics,

1 the 1997 Regulations

2 the Board

Physics and Chemistry but the petitioner also appeared at the 2004 Intermediate Examination conducted by the Board in Biology subject in accordance with Regulation 17(2) contained in Chapter XII of the Regulations framed under the provisions of the U.P. Intermediate Education Act, 1921. Thereafter, the petitioner took admission in the first year MBBS Course in B.P. Koirala Institute of Health Sciences, Dharan Nepal³ in the year 2006. This course, which is of 5 years duration, was completed by the petitioner in 2011 and a provisional degree was granted to the petitioner in 2012 after he completed the Residential Rotatory Internship.

The petitioner, then applied for enrollment in the Medical Register maintained by the State Medical Council but for that purpose it was necessary for the petitioner to qualify the Screening Test conducted by the Prescribed Authority under the provisions of the 'Screening Test Regulations, 2002'⁴. The petitioner appeared at the Screening Test. The result has not been declared because the petitioner has not submitted the Eligibility Certificate that is issued under the provisions of the 'Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002'⁵. The petitioner had submitted an application before the Medical Council of India on 19 September 2011 for grant of the Eligibility Certificate. According to the petitioner no decision was taken. This petition was filed for a

3 the Institute

4 Screening Test Regulation

5 the Eligibility Requirement Regulation

direction upon the respondents to declare the result of the Screening Test without requiring the petitioner to submit the Eligibility Certificate. During the course of hearing of the petitioner, the respondents stated that the application for grant of the Eligibility Certificate had been rejected by order dated 7 October 2012. The petitioner moved an amendment application for adding a prayer for quashing the order dated 7 October 2012. The amendment application was allowed.

The order dated 7 October 2012 has placed reliance upon Regulation 4 (a) of the 1997 Regulations. This Regulation provides that a candidate shall be allowed to be admitted in the first year MBBS Course if he has passed the Higher Secondary Examination or the Indian School Certificate Examination after a period of 12 years study, of which the last two years shall comprise of Physics, Chemistry, Biology and Mathematics with English.

It is, therefore, necessary to reproduce Regulation 4 of the 1997 Regulations and it is as follows:-

“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 (MBBS) Course until:

(1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course.

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

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any

other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges.

or

(b) The Intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject.

or

(c) The pre-professional/re-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry & Biology and also English as a compulsory subject.

or

(d) The first year of the three years degree course of a recognized university, with Physics, Chemistry and Biology including a practical test in these subjects provided the examination is a “University Examination” and candidate has passed 10+2 with English at a level not less than a core course.

or

(e) B.Sc. Examination of an Indian University, provided that he/she has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects δ Physics, Chemistry, Biology and English.

or

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

Note:

The pre-medical course may be conducted either at Medical College or a Science College.

Marks obtained in mathematics are not to be considered for admission to MBBS course.

After the 10+2 course is introduced, the integrated courses should be abolished.”

The issue, therefore, that arises for consideration in this petition is whether the Medical Council of India could have refused the grant of Eligibility Certificate to the petitioner for the reason that he had not studied Biology subject in Class XI and Class XII before appearing at the Intermediate Examination in Science. This, as noted above is the sole reason given by the Medical Council of India in the impugned order dated 7 October 2012 for rejecting the claim of the petitioner for grant of the Eligibility Certificate.

The contention of Sri G.K. Singh, learned Senior Counsel appearing for the petitioner is that the Authority completely failed to appreciate that the petitioner had passed the Intermediate Examination in Science and not the Higher Secondary Examination or the Indian School Certificate Examination and, therefore, the admission eligibility criteria was required to be examined under Regulation 4 (2) (b) of the 1997 Regulations in which there is no requirement that the last two years of study in Class XI and Class XII should comprise Physics, Chemistry, Biology and Mathematics subjects. Learned Senior counsel submitted that the Authority, while examining the case of the petitioner for grant of the Eligibility Certificate, have wrongly

placed reliance upon Regulation 4(2)(a) of the 1997 Regulations to arrive at a conclusion that the petitioner was not eligible for admission to MBBS course in the Institute at Nepal since he had not studied Biology in Class XI and Class XII before appearing at the Intermediate Examination in Science. The contention is that though the petitioner had appeared at the Intermediate Examination in 2003 with Physics, Chemistry and Mathematics but the petitioner had also appeared at the 2004 Intermediate Examination in Biology subject and qualified it with practical test in accordance with the Regulations framed by the Intermediate Board and was, therefore, clearly eligible to be admitted to the MBBS Course in the Institute at Nepal. In such circumstances, learned Senior Counsel contended that the requirement for admission to the MBBS Course set out in Regulation 4 of the 1997 Regulations stood satisfied. It was, therefore, incumbent upon the Authority to issue the Eligibility Certificate and on issuance of the Eligibility Certificate, the result of the Screening Test can be declared so that the petitioner becomes entitled to be enrolled on the Medical Register maintained by the State Medical Council or have his name entered in the Indian Medical Register if he qualifies the Screening Test.

Sri Avanish Mishra, learned counsel appearing for the Medical Council of India, which has been impleaded as respondent no.3 in the writ petition, has, however, submitted that the Intermediate Examination is of two years and unless a candidate has studied Class

XI and Class XII with Physics, Chemistry and Biology as subjects, the candidate would not be considered eligible for taking admission to the MBBS Course. His contention is that the petitioner had studied Biology subject for only one year and, therefore, in view of the clear stipulation contained in Clause 4 of the 1997 Regulations, the petitioner was not entitled to be admitted in the MBBS Course and consequently not entitled for the grant of Eligibility Certificate. Learned counsel, therefore, submitted that the Authority committed no error in rejecting the claim of the petitioner for issuance of the Eligibility Certificate. It is also the contention of learned counsel that the petitioner should have obtained the Eligibility Certificate prior to asking admission in the MBBS Course in the Nepal Institute in view of the provisions contained in Section 13(4)(B) of the Indian Medical Council Act, 1956⁶ which provides that a person who is a citizen of India shall not, after such date, as may be prescribed 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 submission of the Eligibility Certificate issued to him by the Council and in case such a person obtains the qualification without such Eligibility Certificate, he shall not be eligible to appear in the Screening Test.

We have considered the submissions advanced by learned counsel for the parties.

6 the Act

The relevant facts to determine whether the petitioner is entitled to the grant of the Eligibility Certificate can be summarised as follows:-

(i) The petitioner passed the Intermediate Examination in 2003 with Physics, Chemistry, Mathematics, General Hindi and English;

(ii) He appeared at the 2004 Intermediate Examination in Biology subject with practical in accordance with the Regulations framed by the Intermediate Board and was declared passed;

(iii) The petitioner took admission in the MBBS Course in 2006 in the Institute at Nepal which is a Medical Institute mentioned in Schedule II of Section 12 of Act;

(iv) The petitioner completed the five years MBBS Course in 2011 and a provisional degree was awarded in 2012 after completing the Internship.

(v) Thereafter, the petitioner appeared at the Screening Test so that he could be enrolled on a Medical Register maintained by the State Medical Council or have his name entered in the Indian Medical Council Register under Section 13 (4A) of the Act;

(vi) For that purpose, the petitioner also moved an application

for grant of Eligibility Certificate;

(vii) The Eligibility Criteria is issued under the provisions of the Eligibility Requirement Regulations. Regulation 8 provides that for considering the application for grant of Eligibility Certificate, it has to be verified whether the candidate fulfills the eligibility criteria for admission to MBBS Course as prescribed by the 1997 Regulations namely obtaining the minimum qualifying marks in Physics, Chemistry, Biology and English. Regulation 10 further provides that in case the candidate does not fulfill any of the qualifying criteria, the Council may reject the application for issuing the Eligibility Certificate.

The Council has rejected the application filed by the petitioner for issuance of the Eligibility Certificate for the reason that the petitioner did not satisfy the requirement contained in Regulation 4(2) (a), namely that the petitioner did not study Biology subject in the last two years of study before appearing at the Intermediate Examination.

To appreciate the contentions advanced by the learned counsel for the parties, it would be appropriate to first reproduce the relevant provisions of the Act and the concerned Regulations. Sub-sections 4A and 4B of Section 13 of the Act, which deal with Screening Test and Eligibility Certificate, are reproduced below:-

“Section (4A):- A person who is a citizen of India and

obtains medical qualification granted by any medical institution in any country outside India recognised 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.

Section (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 recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.”

The result of the Screening Test, in which the petitioner had appeared, has been withheld for the reason that the petitioner does not have an Eligibility Certificate. Regulations 3, 4 and 11 of the Screening Test Regulations are relevant and are reproduced:

“3. **An Indian citizen** possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or

permanent registration with the Medical Council of India or any State Medical Council on or after 15.03.2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of section 13 of the Act:

Provided that a person seeking permanent registration shall not have to qualify the screening test if he/she had already qualified the same before getting his/her provisional registration.

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

1. he/she is a citizen of India and possesses any primary medical qualification, either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organisation; or which is confirmed by the Indian Embassy concerned to be a recognised qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated.

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.

11. The Prescribed Authority shall intimate the result of the Screening Test to the candidates as well as to the Secretary, Medical Council of India and the State Medical Councils. The unsuccessful candidates shall also be appropriately informed. The candidates who qualify the Screening Test may apply to the Secretary, Medical Council of India, New Delhi or to any State Medical Council for provisional registration/permanent registration alongwith the requisite registration fee in favour of Secretary, Medical Council of India or the State Medical Council. The Medical Council of India or the State Medical Councils shall issue provisional registration to such successful candidates, who are yet to undergo one year internship in an approved institution and issue permanent registration to such

eligible candidates who have already undergone one year internship, as the case may be.”

At this stage it will also be useful to reproduce Regulations 3, 4, 8, 9, 10 and 11 of the Eligibility Requirement Regulations dealing with the Eligibility Certificate and they are:-

“3. An Indian citizen, who has passed the qualifying examination either from India or an equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution on or after 15th March, 2002 shall approach the Council for issue of an Eligibility Certificate for that purpose.

4. The request for issue of Eligibility Certificate shall be made by the candidate in the proforma prescribed by the Council and shall be accompanied by the original certificate/mark-sheet (alongwith Photostat copy) of the qualifying examination. The original certificate shall be returned to the candidate after verifying the same with the photostat copy which shall be retained by the Council. Request shall also be accompanied by a Demand Draft for the specified sum in favour of Secretary, Medical Council of India, New Delhi. The fee shall be fixed by the Council.

5.....

6.....

7.....

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

1. Whether the candidate fulfills the age criterion prescribed by the Council?

2. 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?

3. If the candidate belongs to SC/ST/OBC, whether he/she has produced a caste certificate from a

Competent Authority.

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 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.

10. In case the candidate does not fulfill any of the qualifying criteria the Council may reject his application for issue of Eligibility Certificate giving the reasons therefore.

11. The issue of a eligibility certificate to a candidate shall not entitle him to any right, whatsoever, other than to take admission in an undergraduate medical course in a foreign Medical Institute.”

Thus, a person who obtains a medical qualification granted by any Medical Institution in a foreign country can be enrolled on a Medical Register maintained by the State Medical Council only after he qualifies the Screening Test. The Screening Test Regulations provide that a person would be eligible to appear in the Screening Test only after he obtains the Eligibility Certificate from the Medical Council of India in accordance with the requirements contained in the Eligibility Requirement Regulations. The Eligibility Requirement Regulations provides that Eligibility Certificate would be issued after verifying that the candidate fulfills the eligibility criteria for admission to MBBS Course as prescribed in the 1997 Regulations. The 1997 Regulations provides for six alternative qualifying

examinations. Regulation 4(2)(a) deals with the Higher Secondary Examination or the Indian School Certificate Examination, while Regulation 4(2)(d) deals with Intermediate Examination in Science.

The petitioner has been denied the Eligibility Certificate for the reason that the petitioner does not satisfy the requirement contained in Regulation 4 (2) (a) of the 1997 Regulations for taking admission in the MBBS Course. Regulation 4 deals with admission to the Medical Course. Clause (1) provides that no candidate shall be allowed to be admitted in the first year MBBS Course until the candidate has completed the age of 17 years on or before 31 December of the year of admission in the MBBS Course. Clause (2) provides that the candidate should have passed the qualifying examination enumerated in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (f). Clause (a) refers to Higher Secondary Examination or the Indian School Certificate Examination. It provides that the candidate should have passed either of the aforesaid examinations after a period of 12 years study, but the last two years of study should comprise Physics, Chemistry, Biology and Mathematics subjects or any other elective subjects with English. Clause (b) refers to Intermediate Examination in Science. It provides that the candidate should have passed the Intermediate Examination in Science with Physics, Chemistry and Biology, which shall include a practical test in these subjects and also English as a compulsory subject. Clauses (c) or (d) or (e) or (f) refer to other examinations. The relevant alternative

clauses are (a) and (b) since the Medical Council of India is relying upon clause (a), while the petitioner is relying upon clause (b).

Clause (a) and (b) are contained in the same Regulation 4 of 1997 Regulations. What is important is that whereas clause (a), which refers to Higher Secondary Examination or the Indian School Certificate Examination, requires a period of study of 12 years, of which the last two years of study should comprise Physics, Chemistry, Biology and Mathematics, clause (b) is silent on this requirement of study of Physics, Chemistry, Biology in the last last two years of study. The Regulation making body, in its wisdom, has itself drawn a distinction between the eligibility requirement set out in clause (a) and clause (b) inasmuch as a candidate who has passed the Higher Secondary Examination or the Indian School Certificate Examination is required to study Physics, Chemistry, Biology, Mathematics and English in Class XI and Class XII which are the last two years of his study but for a candidate who has passed the Intermediate Examination in Science with Physics, Chemistry and Biology there is no such requirement.

It needs to be remembered that the Higher Secondary Examination/Indian School Certificate Examination as well as the Intermediate Examination are all 10 + 2 Examinations. Yet a distinction has been drawn by the Medical Council of India in the 1997 Regulations. The Higher Secondary Examination and the Indian School Certificate Examination have been clubbed together under

Regulation 4(2)(a), but for the Intermediate Examination a separate requirement is contained in Regulation 4(2)(b) of the 1997 Regulations. It also needs to be noted that while Regulation 4(2)(a) deals with Physics, Chemistry, Biology and Mathematics with English, Regulation 4(2)(b) deals with Physics, Chemistry and Biology only. The Regulation making body was aware of the examinations conducted by these three separate Boards. It was aware that the Intermediate Board permits a candidate under Regulation 17(2) contained in Chapter XII to opt for one or at the most four subjects, after having cleared the Intermediate Examination. Thus, a candidate who qualifies the Intermediate Examination in particular year has the option to appear in all or any of the four subjects including Biology in subsequent year. Thus, a candidate who has qualified the Intermediate Examination can opt for Biology subject in the subsequent year and on clearing it would be issued a certificate. It is for this reason that there is no requirement for a candidate appearing in the Intermediate Examination to study Physics, Chemistry and Biology in both Class XI and Class XII. Such a distinction has been consciously made and the requirement of study of Biology both in Class XI and Class XII cannot be inferred in the eligibility requirement contained in Regulation 4(2)(b).

The impugned order dated 7 October 2012, by which the claim of the petitioner for grant of the Eligibility Certificate has been rejected, only refers to clause (a) of Regulation 4(2). The petitioner, it

needs to be emphasized, had not passed the Higher Secondary Examination or the Indian School Certificate Examination. There is no doubt that the petitioner had passed the Intermediate Examination conducted by the Board in 2003 with Physics, Chemistry and Mathematics and had subsequently appeared at the Intermediate Examination in Biology subject in 2004 in accordance with the Regulations and cleared it. Clause (b) of Regulation 4(2) dealing with Intermediate Examination does not require study of Biology, Physics or Mathematics during last two years, unlike, the requirement contained in clause (a) for a candidate who appears at the Higher Secondary Examination or the Indian School Certificate Examination.

What has to be noticed is that the Medical Council of India has not even referred to clause (b) of Regulation 4 (2) of the 1997 Regulations, which clause specifically deals with a candidate who has appeared at the Intermediate Examination. The order only refers to clause (a) relating to a candidate who has appeared at the Higher Secondary or the Indian School Certificate Examination. Learned counsel for the Medical Council of India has however, submitted that mere reference to a wrong Regulation will not make any difference because even under Regulation 4 (2) (b), the petitioner should have undertaken two years of study of Biology subject before appearing at the Intermediate Examination. The eligibility requirement under clause (b) has been examined and there is no manner of doubt that clause (b) does not require that a candidate should have studied

Biology subject for two years before appearing at the Intermediate Examination.

A Division Bench of the Patna High Court in **Letters Patent Appeal No.1136 of 2015**⁷, arising out of Civil Writ Jurisdiction Case No.20894 of 2014 also examined whether Eligibility Certificate can be granted to a candidate who passed the Intermediate Examination in the same manner, as the petitioner has. The candidate passed the Intermediate Examination conducted by the Intermediate Education Council, Patna in 2005 with Physics, Chemistry and Mathematics and then appeared in the 2006 Examination with Biology as an additional subject. After clearing it, the candidate took admission in the National Medical College, Birganj in Nepal in 2008, and cleared the MBBS Examination in 2014. The Eligibility Certificate was not granted for the reason that the candidate had not studied Biology for two years.

The Patna High Court emphasised that the requirements contained in Regulation 4 of the 1997 Regulations are alternative requirements and either of them can make a candidate eligible for seeking admission to the MBBS Course. The Court noticed the distinction between the eligibility requirement prescribed under Regulation 4(2)(a) and 4(2)(b) of the Regulations and held that there was no requirement of two years of study of Biology subject under Regulation 4(2)(b). The Court, therefore, set aside the order rejecting

⁷ Aimam Kamal v. The Medical Council of India and Others decided on 23 August 2016

the request for issue of Eligibility Certificate and the observations are as follows:-

“22. On the basis of the pleadings on record and rival submissions made on behalf of the parties, the issues, which have emerged for determination in the present appeal can be summarized as under:-

Is it essential for a candidate to have undergone two years of study, simultaneously in the subjects Physics, Chemistry and Biology at Intermediate/+2 level in order to acquire eligibility for admission to MBBS course in Medical Colleges in India, as contemplated under Regulation 4(2) of the "Regulations on Graduate Medical Education, 1979" as noted above? In the present case, the moot question is as to whether a candidate is disqualified from being admitted to MBBS course under the said Regulations on the ground that the Regulation 4(2)(e) of the same provides for two years course in Physics, Chemistry and Biology, whereas the appellant pursued her one year course as regular student, in Biology, to secure certificate of passing Intermediate course in the said subject, after having passed the two years course in the subjects Physics, Chemistry and Mathematics?

24. Unlike the case of **Rajendra Prasad Mathur** (supra), the Medical Council of India has laid down, in the present case, alternative conditions of eligibility under Regulation 4(2) of the Regulations as quoted and discussed hereinabove, which includes passing of Intermediate Examination in Science of an Indian University/Board or other recognized body, Physics, Chemistry, Biology/Bio Chemistry. There is another alternative qualification at clause (f) under Regulation 4(2) of the Regulations according to which, a candidate, who has passed an examination of which, the scope and standard is found to be Intermediate Science Examination of an Indian University/Board taking Physics, Chemistry and Biology including practical test, is eligible for admission to MBBS course. Whereas at (a) Regulation 4(2), 12 years of study is specifically provided, there is no such prescription at (b) and (f). For this purpose, we need to closely examine Regulation 4(2) of the Regulations on Graduate Medical Education, 1997. We have already extracted Regulation 4(2) in the foregoing

paragraphs, which prescribes alternative conditions of eligibility for admission to MBBS course.

25.....

26. Upon careful reading of Regulation 4(2) of the said Regulations, we find ostensible distinction between the qualification prescribed under Regulation 4(2)(a) and 4(2)(b) of the Regulations. For a candidate to be eligible for admission to MBBS course, under Regulation 4(2)(a) of the said Regulations, he/she is required to have passed Higher Secondary Examination or Indian School Certificate Examination, which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years, the last two years of study comprising of Physics, Chemistry, Biology/Bio-technology and Mathematics or any other elective subjects with English..... Whereas in Regulation 4(2)(a), passing of Higher Secondary Examination/Indian School Certificate Examination after a period of twelve years of study, the "last two-years of study", comprising Physics, Chemistry and Biology/Bio-technology, has been prescribed as the eligibility qualification, no such period has been mentioned under Regulation 4(2)(b) of the said Regulations in relation to Intermediate examination in Science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology/Bio-technology. The qualification, prescribed under Regulation 4(2)(b) of the said Regulations, is certainly alternative to the qualification as prescribed under Regulation 4(2)(a) of the Regulations.

27.....

28. What we find in Regulation 4(2) of the said Regulations is that there is intentional omission of "last two-years of study", in Regulation 4(2)(b) of the Regulations, which expression is there in Regulation 4(2)(a) of the Regulations.....

The reason, which has been assigned in the communication, is that as per the Regulations of Medical Council of India on Graduate Medical Education, 1997, a candidate has to

undergo two-years of study in subjects Physics, Chemistry and Biology for issuing eligibility certificate.....

30. In our view, thus, the decision of the Medical Council of India, refusing to grant eligibility certificate to the appellant on the ground that a candidate has to undergo "two-years of study in Physics, Chemistry and Biology" as mandatory for issuing of eligibility certificate, cannot be sustained inasmuch as the Medical Council of India has not considered the case of the appellant with reference to Regulation 4(2)(b) and 4(2)(f) of the Regulations of the Council on Graduate Medical Education, 1997, and Regulation 13 of the Regulations for Intermediate examination, framed by the Bihar Intermediate Education Council, Patna."

(Emphasis supplied)

Learned counsel for the Medical Council of India, has, however, placed reliance upon judgement of a learned Judge of the Delhi High Court in **Writ Petition No.10133 of 2009**⁸ and has submitted that the requirement of two years of study of Biology even for a candidate who has passed the Intermediate Examination is an essential requirement and the Medical Council of India can reject the application for issuance of the Eligibility Certificate under clause 10 of the Eligibility Requirement Regulations.

The Delhi High Court also examined whether an Eligibility Certificate can be granted to a candidate who had appeared at the Intermediate Examination in 2006 and had subsequently again appeared at 2007 Intermediate Examination with Biology as an additional subject. The Court inferred that the requirement contained

⁸ Mohammad Parvez Akhtar Vs. Union of India and Others decided on 31 August 2009

in clause (a) of Regulation 4 (2) regarding two years of study in Physics, Chemistry, Biology and Mathematics subjects should be read in clause (b) and the observations are as follows:

“26. The plea of the petitioner that in Code 2 of clause 8 (v) of Bulletin of Information, two years of study in Biology is not specifically provided and so it should not be read into it is also not acceptable as on the basis of examination such distinction should not be carved out. Classification on the basis of type of examination i.e two years continuous study in one particular examination and not insisting for two years study in respect of another examination will not be permissible. The learned counsel for the petitioner has also contended that in the intermediate examination from the U.P Board a candidate is not allowed to take Mathematics with Biology. Therefore, the petitioner had taken Physics, Chemistry and Mathematics, he was not allowed to take Biology and therefore, after qualifying intermediate examination in 2006, he took Biology as an additional subject and qualified the same with practical in 2007 as a regular subject. This is not disputed that a candidate is entitled to take Physics, Chemistry and Biology even for the intermediate examination. Such a candidate who opts for biology in preference to Mathematics, study Biology for two years with practical. Therefore, if the petitioner wanted to join MBBS course he should have opted for Biology as a regular subject with a study of two years. If MCI insists on last two years study in each subject being essential on the reasoning that such study necessarily assimilates with periodic practical and evaluation of students in such activity is vital for the study of medicine, such insistence cannot be termed as an empty or ritualistic experience but is a matter of maintaining standard having regard to the nature of medical education and it cannot be ignored on the grounds as has been alleged by the petitioner. If in Code 1 of clause 8 (v) a two years study in each subject is required, then for the same reasoning the two years study of each subject is necessary even under other Codes of clause 8 (v) and has to be read in Code 2 of clause 8 (v) also”.....

(Emphasis supplied)

Learned counsel for the Medical Council of India has also pointed out that Special Appeal filed by Mohd. Parvez Akhtar was dismissed on 12 October 2009 and the Special Leave Petition was also dismissed by the Supreme Court on 5 July 2010. It needs to be noted that dismissal of the Special Leave Petition would only mean that the judgement of the Division Bench of the Delhi High Court attained finality.

There are, therefore, two contrary views interpreting Regulation 4(2)(b) of the 1997 Regulations. The Patna High Court has held that a candidate who has qualified the Intermediate Examination need not have studied Biology subject for two years as is the requirement contained in Regulation 4(2)(a) of the 1997 Regulations. The Delhi High Court has, however, held that the requirement of two years of study of Biology, even though not contained in Regulation 4(2)(b), should be read in it since it is a requirement contained in Regulation 4(2)(a). For the reasons we have already indicated, it is difficult to subscribe to be the view taken by the Delhi High Court.

It is, therefore, clear that while rejecting the application filed by the petitioner for grant of the Eligibility Certificate, the Authority did not even consider it appropriate to examine that the petitioner had passed the Intermediate Examination and not the Higher Secondary Examination/Indian School Certificate Examination because the impugned order refers to the requirements contained in Regulation 4(2)(a) which relate to Higher Secondary Examination/Indian School

Certificate Examination. The denial of the Eligibility Certificate to the petitioner in 2012 has resulted in non-declaration of the Screening Test result in which the petitioner had appeared. This has consequently led to a situation where the petitioner cannot be enrolled on the Medical Register maintained by the State Medical Council. The callous attitude of the Authority has, therefore, resulted in loss of five precious years of the petitioner.

Thus, for all the reasons stated above, the admission of the petitioner in the MBBS course was in accordance with Regulation 4 of the 1997 Regulations and the decision contained in the order dated 7 October 2012 that the petitioner did not fulfill the criteria contained in Regulation 4(2)(a) of the 1997 Regulations, is patently wrong. The petitioner is, therefore, clearly entitled to the issuance of an Eligibility Certificate since that is the only reason assigned in the order for not granting the Eligibility Certificate.

Learned counsel for the Medical Council of India in the end, made an attempt to support the impugned order by contending that the petitioner was not entitled to be admitted to the MBBS course in the Nepal Institute since he had not submitted the Eligibility Certificate before taking admission and in this connection learned counsel referred to Section 13 (4B) of the Act.

In the first instance, such a reason has not even been mentioned by the Medical Council of India in the order rejecting the claim of the

petitioner for grant of the Eligibility Certificate. Even otherwise, the petitioner had taken admission in the MBBS Course in an Institute referred to in Section 12 of the Act in the year 2006. The name of the Institute is mentioned in the Second Schedule. The Medical Council of India had at the relevant time in 2006 drawn a distinction between medical qualification granted by Institutions referred to in Section 12 (Schedule II) and Section 13 (Part-II of Schedule III) since after introduction of sub-sections 4 (A) and (B) in Section 13 of the Act, the Medical Council of India maintained that it was not necessary for candidates seeking admission to a Medical Institution referred to in Section 12 (Schedule II) to submit the Eligibility Certificate before taking admission in the MBBS Course and candidates seeking admission to an Institution referred to in Section 13 (Part II of the Third Schedule) alone was required to submit the Eligibility Certificate. Candidates who were seeking admission to a Medical Institution referred to in Section 12 (Second Schedule), therefore, did not apply for such a certificate. It is only, when the Courts did not accept the view of the Medical Council of India that there is a distinction between a Medical Institution referred to in Section 12 and a Medical Institution referred to in Section 13 that the Medical Council of India issued a Press Note on 8 October 2008 that it was also **henceforth** necessary for a candidate seeking admission to a medical institution referred to in Section 12 (Schedule II) to submit the Eligibility Certificate before taking admission in the MBBS

Course. The relevant portion of the Press Note dated 8 October 2008 which explains this position is as follows:

“On a further examination of the relevant facts, the provisions of the Act including the amendments carried out in the year 2001, the provisions of the regulations dated 18.02.2002, i.e., Screening Test Regulations and Eligibility Certificate Regulations relatable to Section 13(4)A and 13(4)B of the Act, it has been observed that a careful and correct reading of the provisions of the Act and the regulations do stipulate that all the Indian citizens who secure primary medical qualification (MBBS) from any foreign medical institution which is either included in the Schedule-II or included in Part-II of the IIIrd Schedule shall be required to qualify the screening test under the provisions of the Screening Test Regulations.

The only exception which has been made is with regard to the temporary permissions which are granted by the MCI for the purposes of research, medical services for charitable and philanthropic purposes under the provisions of Section-14 of the Act. It was submitted before the High Court that there seems to be a bonafide, however, an erroneous understanding of the requirements of the provisions of the IMC (Amendment) Act, 2001 and the Screening Test Regulations. The requirement of law gets clear on the proper reading and understanding of the above-mentioned statutory position under the Act. It would neither depend on the affidavit(s) of any authority, Govt. of India etc. nor would it be dependent upon the erroneous impression or understanding of any authority including the Council. In any case, the ultimate analysis and interpretation shall be within the exclusive jurisdiction of the Hon'ble Courts requiring the concerned authorities to abide by it.

It is further made clear that henceforth all those Indian students who are desirous of seeking admission in any foreign medical institution, shall be required to obtain an "Eligibility Certificate" from the MCI under the Eligibility Certificate Regulations 2002, before they are admitted in any foreign medical institution whether recognized under section 12 or under section 13 of the Indian Medical Council Act, 1956.”

(Emphasis supplied)

The petitioner had taken admission in the Nepal institute in the year 2006 much prior to the issuance of the Press Note dated 8 October 2008. At that point of time, as noticed above, the Medical Council of India was clearly of the view that a candidate seeking admission in a Foreign Medical Institute referred to in Section 12 (Schedule II) was not required to submit the Eligibility Certificate before taking admission in the MBBS Course. It is only when this view of the Medical Council of India was not accepted by the Courts that a Press Note was issued on 8 October 2008 requiring that a candidate seeking admission to a Foreign Medical Institute referred to in Section 12 (Schedule II) has to also submit the Eligibility Certificate before taking admission. It is, therefore, not open to the learned counsel for the Medical Council of India to contend that the petitioner could not have been granted admission to the MBBS Course in the Nepal Institute, which is an institute referred to in Section 12 (Schedule II), since the Eligibility Certificate was not submitted by the petitioner before taking admission. It is obvious that is for this reason that such a ground was not even taken by the Medical Council of India in the order dated 7 October 2012 while rejecting the application filed by the petitioner for grant of the Eligibility Certificate. Thus, even this additional reason of learned counsel for the Medical Council of India cannot be accepted.

The impugned order dated 7 October 2012 denying the issuance of the Eligibility Certificate to the petitioner, therefore, deserves to be

set aside and is set aside. The Medical Council of India shall now take a decision for issuance of the Eligibility Certificate to the petitioner strictly in the light of the observations made above within a period of three weeks from the date a certified copy of this order is filed by the petitioner. The writ petition is allowed to the extent indicated above.

Order Date :- 4.4.2017
S.Sharma

(Dilip Gupta,J.)

(Prabhat Chandra Tripathi,J.)