

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THURSDAY THE THIRTY FIRST DAY OF AUGUST,
TWO THOUSAND AND SIX

:PRESENT:

THE HON'BLE MS JUSTICE G. ROHINI

W.P.M.P NO: 17221 of 2006

IN

W.P.NO: 13832 of 2006

Between:

R.Sharada D/o R. Laxman Nayak, R/o Laxman Nayak Tent House, Maisgand Village,
Amalgal Mandal, Mahaboobnagar District.

..... Petitioner

(Petitioner in WP.No : 13832 of 2006
on the file of High Court)

AND :

1. The Medical Council of India, Rep by its Secretary, Pocket-14, Sector-8,
Dwaraka Phase-I, New Delhi-110 075.
2. The Union of India, Rep by its Principal Secretary, Department of Medical Health
and Family Welfare, Govt. of India, New Delhi.

..... Respondents

(Respondents in -do-)

Petition under Section 151 of CPC praying that in the circumstances stated in the petition and affidavit filed herein in support thereof the High Court may be pleased to direct the respondents to entertain and accept the application of the petitioner for considering the suitability or otherwise for issuing Eligibility Certificate in accordance with Section 13 (4B) of the Indian Medical Council Act, 1956 as amended in 2001 for joining Medical Institution situated in any foreign country and accord the same, pending disposal of the Writ Petition No. No. 13832 of 2006 on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court dated 11-07-2006 made herein and upon hearing the arguments of Sri Nuty Ram Mohan Rao, Advocate for the Petitioner and of Sri S. Niranjan Reddy, Advocate, for the Respondent No. 1, and of Sri A. Rajasekhar Reddy, S.C. for Central Govt. on behalf of the Respondent No. 2, the Court made the following:

(Contd. 2.)

ORDER:

The petitioner hails from Mahaboobnagar District of Andhra Pradesh. She passed the 2-years-Intermediate Examination, conducted by the Board of Intermediate Education, A.P., in March, 2006, with Botany, Zoology, Physics and Chemistry as optional subjects. English was one of the compulsory languages studied by her during the course of her education. She will be attaining 17 years of age as on 31-12-2006 and secured 745 marks out of 1000 marks in the Intermediate Examination. Thus, it is claimed that she is qualified and eligible for securing admission in any medical institution in India.

However, the petitioner wanted to prosecute medical education from Dalian Medical University in Peoples' Republic of China, which is an institution recognised by the World Health Organisation (WHO). On an application made by her, the petitioner was accorded admission in Dalian Medical University and she was asked to register at the University before 08-09-2006.

Since under the provisions of the Indian Medical Council Act, 1956 and the Regulations made thereunder for prosecuting the medical education in a foreign country, it is

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essential to obtain the eligibility certificate from the Medical Council of India, the petitioner submitted an application to the 1st respondent – Medical Council of India (for short 'MCI') requesting to grant such certificate. The said application was not entertained by the 1st respondent on the ground that the institution in which the petitioner has obtained admission in China does not form part of any of the Schedules to the Indian Medical Council Act, 1956 (for short, 'the Act'). Hence, the main writ petition seeking a Writ of Mandamus declaring the action of the Medical Council of India in insisting upon and introducing a condition that the foreign University in question should have been included in the Schedules of the Indian Medical Council Act, 1956 for the purpose of issuance of eligibility certificate for securing admission in any medical institution in a foreign country as unconstitutional, arbitrary, illegal, unjust and contrary to the provisions of Indian Medical Council Act, 1957 as amended in September, 2001.

Pending the main writ petition, the petitioner in this miscellaneous application sought a direction to the respondents to entertain and accept the application of the petitioner for issuing the eligibility certificate.

I have heard the learned Counsel for the petitioner as well as the learned Counsel appearing for the 1st respondent – Medical Council of India and perused the material on record.

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It is not in dispute that the Act contains provisions in Sections 12, 13 and 14 with a view to recognizing medical qualifications granted by medical institutions in foreign countries.

It may also be noted that whereas the **First Schedule** to the Act contained the list of medical qualifications granted by any **University or medical institution in India**, which are recognized medical qualifications as provided under Section 11 of the Act, the Second Schedule to the Act contained the list of medical qualifications granted by **medical institutions outside India** which are recognized medical qualifications under sub-section (1) of Section 12 of the Act. That apart medical qualifications granted by certain medical institutions which are not included in the First or Second Schedule are listed in Third Schedule which shall also be recognized medical qualifications for the purposes of the Act as provided under Section 13 of the Act.

For the purpose of the present case, we are not concerned with either Section 11, which deals with recognition of medical qualifications granted by Universities or medical institutions in India or Section 12 which provides for recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity.

Section 13 of the Act which deals with the recognition of medical qualification granted by certain medical institutions

which are not included in the First or Second Schedules to the Act was extensively amended by the Indian Medical Council (Amendment) Act, 2001 (Act No.34 of 2001), published in the gazette on 03-09-2001, with a view to make provisions to enable the MCI to issue prior eligibility certificate before the candidates go for undergraduate medical education outside India and also to conduct a screening test to the candidates who obtain medical qualifications from medical institutions outside India before they are granted registration to practice medicine in India.

Section 13 of the Act as amended by Act 34 of 2001 to the extent it is relevant for the purpose of the controversy involved in the present case may be extracted hereunder:

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule:

- (1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognized medical qualifications for the purposes of this Act.
- (2) The medical qualifications granted to a citizen of India-
 - (a) before the 15th of August, 1947, by medical institutions in the territories now forming part of Pakistan, and
 - (b) before the 1st day of April, 1937, by medical institutions in the territories now forming part of Burma,which are included in Part I of the Third Schedule shall also be recognized medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part II of the Third Schedule shall also be recognized medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

(4) The Central government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the Second Schedule. Provided that after the commencement of the Indian Medical Council (Amendment) Act, 2001, no such amendment shall be made in Part II of the Third Schedule to include any primary medical qualification granted by any medical institution outside India:

Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary medical qualification granted by any medical institution outside India to any person whose name is entered in the Indian Medical Register.

Explanation:-For the purposes of this sub-section, "primary medical qualification" means any minimum qualification sufficient for enrolment on any State Medical Register or for entering the name in the Indian Medical Register.

(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

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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 recognized medical qualification for the purposes of this Act for that person.

(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 recognized 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.

(4C) xxxxxxxx

(5) xxxxxxxx

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It is not in dispute that in accordance with the amendment Act 34 of 2001, the Central Government has notified the date as 15-03-2002 for the purpose of sub-sections (3), (4) and (4-A) of Section 13 of the Act.

That apart the Medical Council of India in exercise of the powers conferred by Section 33 of the Act made two sets of regulations viz., "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002" and "Screening Test Regulations". The said regulations were notified in the official gazette on 18-02-2002.

Since the petitioner herein sought admission in medical course in a foreign medical institution after the amendment to Section 13 of the Act under Act 34 of 2001 and after the above two sets of regulations were enforced, the issue raised in this writ petition is required to be considered in the light of the provisions of sub-sections (3), (4-A) and (4-B) of Section 13 of the Act read with the above said Regulations.

A reading of sub-section(3) of Section 13 of the Act shows that the same deals with recognition of medical qualifications granted by medial institutions outside India before the cut off date specified by the Central Government i.e. 15-03-2002 which are included in part II of Third Schedule subject to fulfillment of requirement of practical training as specified thereunder.

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So far as the persons who obtained medical qualification granted by medical institutions outside India after 15-03-2002 are concerned, two conditions as specified under sub-sections (4-A) and (4-B) of Section 13 of the Act are required to be satisfied so as to get themselves registered with MCI or any State Medical Council. The said two conditions are as under:

1. Under sub-section (4-A), it is mandatory for such person to get qualified in the screening test in India as prescribed under the Screening Test Regulations, 2002.
2. Under sub-section (4-B) before getting admission in any medical institution outside India, it is essential to obtain eligibility certificate issued by the MCI, failing which, he shall not be eligible to appear in the screening test.

The procedure for grant of the eligibility certificate as provided under sub-section (4-B) of Section 13 of the Act has been prescribed in detail in the "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002" (for short 'Eligibility Regulations, 2002'). Regulations 4 and 8 of the said Regulations may be extracted hereunder:

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 (along with 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.

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?

It is clear from the above Regulations that the application for issue of eligibility certificate shall be made by the candidate in the **proforma prescribed by the Medical Council of India.**

It is not in dispute that the proforma prescribed by the MCI for the years 2003, 2004 and 2005 merely required the candidates to furnish the details with regard to the fulfillment of age criteria prescribed by the Council and the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997.

However, for the year 2006, the MCI prescribed a new proforma for the application for the eligibility certificate, according to which the candidates are required to declare that the foreign medical institution in which they are intending to take admission **has been duly mentioned and recognised and included in the schedules to the Indian Medical Council Act, 1956.**

As a result, the candidates who intend to take admission in a foreign medical institution which is not included in the Schedules to the Act are not entitled to seek the eligibility certificate.

Aggrieved by the said action of the MCI, the main writ petition is filed.

The learned Counsel for the petitioner, Sri Nuty Ram Mohan Rao, contended that either the Amendment Act 34 of 2001 or the Regulations made in the year 2002 did not authorize the MCI to impose a condition that the foreign medical institution shall be one which is included in the Schedules to the Act, 1956 and therefore the first respondent shall be directed to grant the eligibility certificate without insisting on such condition.

On the other hand, Sri S.Niranjan Reddy, the learned Counsel appearing for the MCI contended that the insistence made by the Council is in conformity with sub-section (4) of

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Section 13 of the Act as amended by Amendment Act 34 of 2001 read with the Regulations made in the year 2002.

The learned Counsel for the MCI has also raised a preliminary objection as to the maintainability of the writ petition on the ground that neither the respondents against whom the relief is sought are located within the territorial jurisdiction of this Court nor any part of cause of action had arisen within the territorial jurisdiction of this Court. The learned Counsel submitted that both the respondents 1 and 2 in the writ petition are located within the territorial jurisdiction of High Court of Delhi and therefore the petitioner ought to have moved the said Court where similar writ petitions are already pending.

In support of his submission, the learned Counsel for the petitioner relied upon a decision of the Supreme Court in **ONGC vs. UTPAL KUMAR BASU**¹.

The law relating to the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India has been considered in detail by the Supreme Court in **KUSUM INGOTS & ALLOYS LTD. v. UNION OF INDIA**², in which the earlier decision in ONGC's case (1 supra) was also referred to.

It is a well settled principle that in order to confer jurisdiction on a High Court to entertain a writ petition, it must

¹ (1994) 4 SCC 711

² AIR 2004 SUPREME COURT 2321

disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and the entire or a part of it arose within its jurisdiction.

In **KUSUM INGOTS & ALLOYS LTD.**'s case (2 supra), the Supreme Court while observing that those facts which have nothing to do with the prayer in the writ petition cannot be said to give rise to a cause of action which would confer jurisdiction on the Court, held that a distinction between a legislation and executive action should be borne in mind while determining the said question.

In the case on hand, what is under challenge is one of the conditions imposed by the first respondent-Medical Council of India in the application prescribed for the eligibility certificate.

The learned Counsel for the first respondent contended that the action of the MCI in prescribing the proforma by inserting the condition in question is an executive action and therefore the High Court of Delhi, within whose jurisdiction the first respondent is located alone has jurisdiction to entertain and decide the writ petition. The learned Counsel further contended that the mere fact that the petitioner is a resident of State of Andhra Pradesh and that she made an application to the MCI from the State of A.P. would not give rise to any cause of action. The learned Counsel contended that since

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the college in which the petitioner seeks admission is situated in China and the MCI which has to issue the eligibility certificate is located in Delhi, no part of cause of action arose within the territorial jurisdiction of this Court.

I am unable to agree with the above submission. As noted above, since the format of the application for issue of eligibility certificate has been prescribed by the MCI, in exercise of the powers under Section 4 of the Eligibility Regulations, 2002, which applies to the entire territory of India, it forms part of legislation and consequently the cause of action cannot be confined to the situs of issue of such proforma application. Even assuming that the action of the Medical Council of India in imposing the condition in question in the application form is merely an executive order, the cause of action cannot be decided only on the basis of the location of the Medical Council of India, which is a statutory authority.

In this regard, it would be appropriate to note the following observations made by the Supreme Court in **KUSUM INGOTS & ALLOYS LIMITED's** case (2 supra) :

"In fact, a legislation, is it trite, is not confined to a statute enacted by the Parliament or Legislature of a State, which would include delegated legislation and subordinate legislation or an executive order made by the Union of India, State or any other statutory authority. In a case where the field is not covered by any statutory rule, executive instruction issued in this behalf shall also come within the purview thereof. Situs of office of the Parliament, Legislature of a State or authorities

empowered to make subordinate legislation would not by itself constitute any cause of action or cases arising. In other words, framing of a statute, statutory rule or issue of an executive order or instruction would not confer jurisdiction upon a Court only because of the situs of the office of the maker thereof."

In the light of the ratio laid down in the above decision, I am of the view that a part of cause of action arose within the territorial jurisdiction of this Court when the condition in question was sought to be implemented against the petitioner adversely affecting her rights. Hence, the preliminary objection raised by the learned Counsel for the first respondent cannot be sustained.

Now, coming to merits of the case, as per sub-section (4-B) of Section 13 of the Act read with Sections 4 & 8 of the Eligibility Regulations, 2002, the criteria for issuance of the eligibility certificate shall be that the candidate fulfills (1) the age criteria prescribed by the Council i.e., 17 years and (2) the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997 i.e., 50% of minimum qualifying marks in Physics, Chemistry, Biology and English. No other condition is prescribed either under the Act or the Regulations, much less the condition that the foreign medical institution should be included in the Schedules to the Act, at the stage of granting eligibility certificate.

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Even for enrolment as registered practitioner, under the Screening Test Regulations, 2002, it is expressly provided that no person shall be allowed to appear in the screening test unless he/she is a citizen of India and possesses any primary medical qualification either whose name and the institution awarding it or included in the **World Directory of Medical Schools** published by WHO or which is confirmed by the Indian Embassy concerned to be a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated.

Admittedly, the Dalian Medical University, Peoples' Republic of China is included in the **World Directory of Medical Schools** published by WHO.

However, the learned counsel for the first respondent contended that the second proviso to sub-section (4) of Section 13 of the Act prohibits recognition of the qualification granted by the medical institution outside India unless the institution is included in the Schedules to the Act.

On a combined reading of sub-sections (3) and (4) of Section 13 of the Act, it is clear that the prohibition contained in the provisos to sub-section (4) shall be referable only to the medical qualifications granted by foreign institutions before the cut off date i.e. 15-03-2002. Sub-section (4-A) and sub-section (4-B) deal with candidates who obtain medical qualification granted by a foreign institution after the cut off

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date. It is apparent that under sub-section (4-A) and sub-section (4-B) there is no reference to any of the Schedules to the Act, but what is required is that such candidates shall be qualified in the screening test in India ~~to enable them~~ to get themselves registered with the MCI. Another condition required to be satisfied as per the Screening Test Regulations is that such foreign institution should be included in the World Directory of Medical Schools. For the aforesaid reasons, in my considered opinion, a strong *prima facie* case is made out to show that the condition in question is not in conformity with the provisions of the Act and the Regulations made thereunder.

In the counter-affidavit filed by the first respondent as well as the note appended to the application for issuance of Eligibility Certificate, it was stated that the additional requirement viz the foreign university should have been included in the Schedules to the Indian Medical Council Act, 1956, was inserted in compliance with the judgment of the High Court of Delhi dated 5-4-2006 in W.P. (c).No.18600 of 2005. The relevant portion of the judgment, on which the 1st respondent relied upon may be extracted hereunder :

"Anxiety over possible stumbling-blocks to the future of students aspiring to practice as Doctors in India after pursuing medical studies in foreign Universities has been assuaged in large measure by the requirement of obtaining an Eligibility Certificate prior to the commencement of studies abroad post 15-3-2002. The

MCI would now be expected and empowered to issue these Certificates only if the applicant has (a) attained the age of seventeen years, (b) has passed 10 + 2 in the prescribed subjects with the required minimum percentage (50 per cent) and (c) Intends to pursue studies in a foreign university which has been duly mentioned and recognised in the IMC Act."

On a careful reading of the above judgment, it is clear that the context in which the above observations were made was entirely different. In the said case, the Court was not called upon to decide the controversy in the circumstances prevailing post 15-3-2002. At any rate, the expression used in the said judgment was that **"a foreign University which has been duly mentioned and recognised in the IMC Act"**. It was nowhere mentioned that the foreign institution should be included in the Schedules to the Act. Obviously, the ratio laid down in the said judgment was misconstrued by the first respondent.

From the scheme of the provisions of the Act and the Regulations, it is clear that the mere issuance of eligibility certificate will not entitle the petitioner to get qualified for registering herself as medical practitioner in India. The Screening Test Regulations, 2002 made it clear that after possessing the primary medical qualification from a foreign institution included in the **World Directory of Medical Schools** for the purpose of getting provisional or permanent registration with the Medical Council of India or any State Medical Council

the candidate shall have to qualify a screening test conducted by the prescribed authority as per Section 13 of the Act.

Section 9 of the Eligibility Regulations, 2002, mandates that eligibility certificate issued by the Medical Council 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 that test shall only entitle him to provisional/permanent registration by the MCI or the State Medical Councils.

Thus, it is clear that adequate safeguards have been prescribed to ensure the quality of medical education in the foreign institutions. On the other hand, if the first respondent declines to receive the application of the petitioner for eligibility certificate, the petitioner would be deprived of an opportunity, at the threshold, on the ground which *prima facie* appears to be not in conformity with the Act and the Regulations and she would be losing valuable years of education apart from the financial investment already made by her for securing the admission in the foreign institution.

It is relevant to note that Section 11 of the Eligibility Regulations, 2002 also made it clear that 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 institution.

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In the circumstances, the balance of convenience lies in favour of the petitioner and it would be appropriate to protect her interest pending the writ petition. The learned Counsel for the petitioner, Sri Nuty Ramamohana Rao, across the bar stated that the petitioner will not press equities at a later point of time on the ground of her admission into the institution in question.

Accordingly, recording the undertaking of the learned Counsel for the petitioner, the first respondent is directed to consider the application of the petitioner for eligibility certificate without insisting on the condition that the institution in which the petitioner got admission must be included in the Schedules to the Act and pass appropriate orders in accordance with law within one week from the date of receipt of this order. It is made clear that the eligibility certificate, if any, granted to the petitioner in pursuance of this order shall be subject to the result of the writ petition.

WPMP.No.17221 of 2006 is accordingly disposed of.

SD/- K. DAULAT KUMAR
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Secretary, Medical Council of India, Pocket-14, Sector-8, Dwaraka Phase-I, New Delhi -110075
2. The Principal Secretary, Union of India, Department of medical Health and Family Welfare, Government of India, New Delhi
3. R. Sharada D/o R. Laxman Nayak, R/o Laxman Nayak Tent House, Maisgand Village, Amalgal Mandal, Mahaboobnagar District. (Note: Petitioner is permitted to communicate this order by FAX)
4. One spare copy.
5. One CC to Sri Nuty Rama Mohana Rao, Advocate (OPUC)
6. One CC to Sri S. Niranjan Reddy, Advocate (OPUC)
7. One CC to Sri A. Rajashekar Reddy, Advocate (OPUC)