



2024: DHC: 3829-DB



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

+ LPA 374/2024 & C.M.Nos.27627-27628/2024

PREETI SINGH

..... Appellant

Through: Mr.Raman Kapoor, Sr.Advocate with
Mr.Vishal Raj Sehijpal and Mr.Shoeb
Shakeel, Advocates with appellant in
person.

versus

NATIONAL MEDICAL COMMISSION & ORS. Respondents

Through: Mr.T.Singhdev with Mr.Bhanu
Gulati, Mr.Abhijit Chakravarty,
Ms.Anum Hussain, Mr.Aabhaas
Sukhramani, Mr.Tanishq Srivastava,
Mr.Sourabh Kumar and
Ms.Ramanpreet Kaur, Advocates for
R-1/NMC.
Mr.Praveen Khattar, Advocate for R-
3/Delhi Medical Council.

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Date of Decision: 09th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1) Present appeal has been filed by the appellant challenging the order dated 04th March, 2024 passed by the learned Single Judge of this Court in WP(C) 3259/2024 whereby the writ petition filed by the appellant was dismissed.



- 2) Learned senior counsel for the appellant states that the appellant was granted an eligibility certificate dated 19th February, 2014 by the respondent no.1 after a thorough verification and examination of the documents provided with her application and it was only at the belated stage in 2023 that her eligibility certificate was revoked without any proper consideration.
- 3) He states that the learned Single Judge failed to acknowledge that the appellant had submitted all the relevant marksheets and other necessary documents alongside her application to respondent No.1 for the issuance of the eligibility certificate. He emphasises that in the present case the appellant had accurately stated the marks for each subject in her application. According to him, though the appellant omitted to mention pass/fail status against each subject in the application form, yet as she honestly stated her marks, such oversight cannot be construed as deliberate. Consequently, he states the holding that such an omission was intentional constitutes an entirely baseless finding.
- 4) He further states that the respondent No.1 unlawfully and erroneously revoked the eligibility certificate vide impugned letter dated 30th January, 2024 and corrigendum dated 7th February, 2024 on the pretext of false and unsubstantiated grounds regarding the disclosure of inaccurate information. He states that the learned Single Judge failed to consider that the appellant had unequivocally disclosed her Class XII marksheet when applying for the grant of the eligibility certificate and nothing had been concealed therein.
- 5) He states that the impugned letter dated 30th January, 2024 read with corrigendum dated 07th February, 2024, by which the respondent no.1 revoked the eligibility certificate, has led to the erasure of over ten years of the appellant's academic endeavors. He points out that the appellant has



cleared the screening test for practice in India in the year 2023. He contends that the impugned action effectively regresses the appellant's academic journey to a point where she was considering to pursue further studies abroad and now with no future whatsoever.

6) He contends that the learned Single Judge has wrongly equated the case of the appellant to the petitioner in another writ petition being **WP(C) 11649/2021** titled as **Nitin Thomas versus NMC & Anr.** He states that merely basing the dismissal of the appellant's petition on a precedent set in that case constitutes a grave injustice to the appellant.

7) Per contra, learned counsel for respondent No.1 i.e. National Medical Commission (NMC) states that a candidate could have joined an undergraduate medical course abroad only if he/she had passed the subjects of Physics, Chemistry, Biology and English individually. In support of his contention, he relies upon Regulation 5 of Regulations on Graduate Medical Education, 1997 ('GME Regulations') issued by the then Medical Council of India as well as the regulations known as Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2022 ('Regulations, 2022'). The relevant portions of the same are reproduced hereinbelow:-

Regulation 5 of GME Regulations:

"(5) Procedure for Selection to MBBS course shall be as follows:-

i).....

"ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination.



In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.”

Regulations 3, 5 and 8 of Regulations, 2002

“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, 2022 shall approach the Council for issue of an Eligibility Certificate for that purpose.

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5. The Council shall be free to investigate on its own into the correctness of information furnished by the candidate in his / her application and / or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/she shall stand debarred from appearing in the screening test prescribed in sub-section (4A) of Section 13 of the Indian Medical Council Act, 1956 (1012 of 1956) without any notice. The decision of the Council in this regard shall be final.

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

8) He also refers to the application form dated 09th October, 2011 for eligibility certificate filed by the appellant, which does not mention pass/fail status against each subject in the form despite instruction to the applicant/appellant to declare the said fact. He places considerable emphasis



on the appellant's marksheet issued by the CBSE as well as the notation accompanying it, which clearly show that the appellant had been graded 'E' qua the subject Biology, that means, a failed candidate. He states that marksheet shows that the appellant had failed in theory in the subject of Biology, however, this fact was not disclosed in the application form.

9) He contends that the then Medical Council of India had issued the eligibility certificate dated 19th February, 2014 relying on the facts disclosed by the appellant in her application. He points out that it was the Delhi Medical Council which vide letter dated 18th April, 2023 pointed out the discrepancy between the marksheet issued by the CBSE and the eligibility certificate issued by the NMC. He states that as per Rule 5 of the Regulations 2002, the Respondent No.1 has a right to cancel the eligibility certificate if it is subsequently discovered that any information furnished by the candidate is false or incorrect. He states that since as per Regulation 5(ii) of the GME Regulations and Regulation 8(ii) of the Regulations, 2002, the applicant/appellant had to mandatorily and individually pass in each of the four subjects mentioned therein, which included Biology and since the appellant admittedly failed in this subject, she was ineligible to apply for the certificate.

10) Having heard the learned counsel for the parties, this Court is in agreement with the findings of the learned Single Judge that the appellant was ineligible for being awarded the eligibility certificate dated 19th February, 2014 for pursuing her MBBS as she had not passed in each of the mandatory subjects i.e. Physics, Chemistry, Biology and English. The fact that the appellant had failed in Biology is apparent from the marksheet and the instructions issued by the CBSE. The said marksheet and the



instructions are reproduced hereinbelow:-

Sub Code	Subject	Marks Obtained				Positional Grade
		TH	PR	Total	Total in Words	
301	English Core	052	XXX	052	Fifty Two	C2
302	Hindi core	061	XXX	061	Sixty One	C2
043	Chemistry	023	028	051	Fifty One	D2
042	Physics	043	028	071	Seventy One	B2
049	Painting	023	064	087	Eighty Seven	B1
044	Biology	013	029	042FT	Forty Two	E
500	Work Experience					B1
502	Phy & Health Educa					C1
503	General Studies					C2

Abbreviations

AB: Absent in the subject

Ex: Exempted

FP: Fail in Practical

FT: Fail in Theory

Dated: 06-08-2017

Result: Pass

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

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

A-1 Top 1/8th of the passed candidates

A-2 Next 1/8th of the passed candidates

B-1 Next 1/8th of the passed candidates

B-2 Next 1/8th of the passed candidates

C-1 Next 1/8th of the passed candidates

C-2 Next 1/8th of the passed candidates

D-1 Next 1/8th of the passed candidates

D-2 Next 1/8th of the passed candidates

E: Failed candidates”

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



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

3. Clause 38(b) of the Scheme of Examination and pass criteria issued by the CBSE, which clarifies, similarly, thus:

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

A-1 Top 1/8th of the passed candidates

A-2 Next 1/8th of the passed candidates

B-1 Next 1/8th of the passed candidates

B-2 Next 1/8th of the passed candidates

C-1 Next 1/8th of the passed candidates

C-2 Next 1/8th of the passed candidates

D-1 Next 1/8th of the passed candidates

D-2 Next 1/8th of the passed candidates

E Failed candidates”

(emphasis supplied)

11) This Court is further of the opinion that in view of the aforesaid marksheet, it was mandatory on the part of the appellant to have specifically mentioned in her application for eligibility certificate against each subject as to whether she had passed or failed therein. Such a declaration would serve public purpose and enable the authority issuing the eligibility certificate to immediately note, at a glance, whether the candidate is entitled to the certificate or not. Had the appellant, in her application form for grant of eligibility certificate specifically mentioned that she had failed in the Biology subject, there was no question of the eligibility certificate having been issued to her in the first place. Consequently, having obtained the eligibility certificate by concealing this fact, the appellant cannot plead any equities to seek relief from this Court.

12) During the hearing, it also transpires that the appellant had taken admission in Medical College in Nepal in 2009, whereas, she had applied for the eligibility certificate on 09th October, 2011 and had been issued the said certificate only on 19th February, 2014 i.e. virtually after completion of



her MBBS course.

13) The appellant does not dispute her ineligibility under the applicable Regulations, however, she only seeks to invoke the equitable jurisdiction of this Court. Though this Court's sympathy is with the appellant, yet it is not in a position to preserve the eligibility certificate, as it had been issued due to non-disclosure of all relevant documents and/or particulars by the appellant and as noted above, the appellant is indisputably disqualified to apply for admission to MBBS course in India or abroad.

14) In this regard, it will be relevant to refer to the judgments of the Supreme Court relied upon by the respondent No.1, wherein the Supreme Court after detailed deliberation has held that restoration of academic benefits obtained out of improper MBBS admission do not serve larger public administration of justice and if permitted to continue would infact cause manifest injustice. The judgments of the Supreme Court read as under:-

A. *Nidhi Kaim & Anr. vs. State of Madhya Pradesh & Ors. (2017) 4*

SCC 1, wherein it has been held as under:-

“68. It was also asserted on behalf of Vyapam that the fact that the appellants had undergone the entire MBBS course, or a substantial part thereof, should not weigh with this Court as a determinative factor whether or not the appellants were entitled to any sympathetic consideration.

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71. Reliance was also placed on ***Gurdeep Singh v. State of J&K [Gurdeep Singh v. State of J&K, 1995 Supp (1) SCC 188 : 1995 SCC (L&S) 378]***. The instant case also pertained to admission to the MBBS course wherein this Court observed as under : (SCC p. 192, paras 11-12)

“11. In the result, we find that the denial of the seat to the appellant in the sports category, cannot be justified. As Respondent 6 was not eligible, there was no question of a tie. The appellant should now be given the seat. By an earlier interlocutory order, a seat had been directed to be kept vacant for the appellant's benefit in the event



of his success. We direct the authorities to admit the appellant to the course within two weeks from today. We therefore, allow this appeal, set aside the order dated 10-8-1992 of the High Court and grant the reliefs claimed in the writ petition.

12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly.”

(emphasis supplied)

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Based on the aforesaid observations, it was submitted that this Court in the above judgment consciously refused to regularise the admission of the students. Not only that, this Court declared that the students admitted to the course by manipulation would not be entitled to be awarded degrees, etc. by the affiliating body. Even if such a degree had already been awarded the same was to be treated as invalid for all purposes.

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92.....Having given our thoughtful consideration to the above submission, we are of the considered view that conferring rights or benefits on the appellants, who had consciously participated in a well thought out, and meticulously orchestrated plan, to circumvent well laid down norms, for gaining admission to the MBBS course, would amount to espousing the cause



of “the unfair”. It would seem like allowing a thief to retain the stolen property. It would seem as if the Court was not supportive of the cause of those who had adopted and followed rightful means. Such a course would cause people to question the credibility of the justice-delivery system itself.....

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94..... Law, has consequences. And the consequences of law brook no exception. The appellants in this case, irrespective of their age, were conscious of the regular process of admission. They breached the same by devious means. They must therefore, suffer the consequences of their actions. It is not the first time that admissions obtained by deceitful means would be cancelled. This Court has consistently annulled academic gains arising out of wrongful admissions. Acceptance of the prayer made by the appellants on the parameter suggested by them would result in overlooking the large number of judgments on the point. Adoption of a different course, for the appellants, would trivialise the declared legal position.....”

**B. Chairman & Managing Director, Food Corporation of India & Ors.
vs. Jagdish Balaram Bahira & Ors. (2017) 8 SCC 670, wherein it
has been held as under:-**

“66. One of the considerations which is placed in store before the court, particularly when an admission to an educational institution is sought to be cancelled upon the invalidation of a caste or tribe claim is that the student has substantially progressed in the course of studies and a cancellation of admission would result in prejudice not only to the student but to the system as well. When the student has completed the degree or diploma, a submission against its withdrawal is urged a fortiori. In our view, the State Legislature has made a statutory decision amongst competing claims, based on a public policy perspective which the court must respect.....When a candidate is found to have put forth a false claim of belonging to a designated caste, tribe or class for whom a benefit is reserved, it would be a negation of the rule of law to exercise the jurisdiction under Article 142 to protect that individual. Societal good lies in ensuring probity. That is the only manner in which the sanctity of the system can be preserved. The legal system cannot be seen as an avenue to support those who make untrue claims to belong to a caste or tribe or socially and educationally backward class. These benefits are provided only to designated castes, tribes or classes in accordance with the constitutional scheme and cannot be usurped by those who do not belong to them. The credibility not merely of the legal system but also of the judicial process will be eroded if such claims are protected in exercise of the constitutional power conferred by Article 142 despite the State law.

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68. Medical education is what middle-class parents across the length and breadth of the country aspire for their children (whether this will continue to be so in future is a moot question). There is intense competition for a limited number of undergraduate, postgraduate and super-speciality seats. This can furnish no justification for recourse to unfair means including adopting a false claim to belong to the reserved category. The fault-lines of our system, be it in education, health or law, are that its lethargy and indolence furnish incentives for the few who choose to break the rules to gain an unfair advantage. In such a situation, the court as a vital institution of democratic governance must be firm in sending out a principled message that there is no incentive other than for behaviour compliant with rules and deviance will meet severe reprimands of the law.”

15) At this stage, learned senior counsel for the appellant, on instructions, states that the appellant has recently once again appeared in the examination conducted by National Institute of Open Schooling for all the Class XII subjects. He states that her result is awaited.

16) This Court is of the view that, in the event, the appellant is successful in the said exam, that would constitute a new cause of action and for that the appellant would be at liberty to file a fresh application with the NMC for eligibility certificate.

17) In view of the above, present appeal along with the applications is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

**MAY 09, 2024
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