

[2022] 13 S.C.R. 86

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HCMI EDUCATION

V.

NARENDRA PAL SINGH

(Civil Appeal No. 2481 of 2016)

B

JULY 11, 2022

[ABHAY S. OKA AND M. M. SUNDRESH, JJ.]

Education – Admission in foreign country – Course abolished by the country – Liability of appellant-facilitator – Respondent approached the appellant for seeking admission in Philippines to the MBBS course – Admission was secured in the college for the academic year 2007-2008 – Respondent joined the college- By resolution dated 22.09.2008, the Republic of Philippines approved to abolish the MBBS programme from the school year 2008-2009 and made it applicable to students who got admitted for the year 2007-2008 – The students who already got admitted under MBBS Course were offered an alternative course – Respondent did not accept the offer and came back to India and lodged the complaint against the appellant – All forums below, including the NCDRC rejected the appellant's submission that it has no liability and asked to pay \$1200, apart from compensation and costs – Appellant approached the Supreme Court and submitted that appellant is only a facilitator and it has no control over the policy decision of the Republic of Philippines – Held: Appellant played no role in policy decision of Republic of Philippines – The role of appellant stopped when the admission of respondent was secured – The appellant cannot be considered a part of the Republic of Philippines or the office of Commission on Higher Education for the policy decision making, therefore no vicarious liability can be fastened on appellant – Orders passed by lower forums were set aside – Complaint dismissed – Appeal allowed.

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2481 of 2016.

From the Judgment and Order dated 30.05.2013 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2161 of 2012

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Awanish Kumar, Shiv Kumar Pandey, Chandrashekhar A. A
Chakalabbi, Anshul Rai, Girish Deendayalan, Vinayakam Gupta, Abhinav
Garg, Bankey Bihari, Advs. for the Appellant.

Mrs. Shiel Sethi, Adv. for the Respondent.

The Judgment of the Court was delivered by

M. M. SUNDRESH, J.

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1. Heard learned counsel appearing for the parties. When the matter was taken up for hearing on 28.06.2022, there was no representation on behalf of the respondent. So, after hearing the counsel for the appellant, we adjourned the matter to 01.07.2022 in order to extend an opportunity to the respondent. As we find the same situation continues to prevail by the absence of the respondent, we are inclined to dispose of this appeal upon once again hearing counsel for the appellant.

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FACTS IN BRIEF:

2. The respondent before us approached the appellant for seeking admission in Philippines to the Bachelor of Medicine, Bachelor of Surgery (MBBS) course. Accordingly, an admission was secured with M/s Emilio Aguinaldo (for short ‘College’) for the academic year 2007-2008. Fees were paid by the respondent through the appellant. The appellant gave sufficient indication that it was acting on behalf of not only the College, but also the Government vide an advertisement by inviting Respondent through Pamphlet, Brochure supplied accordingly:-

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- a. “The Republic of Philippines and the Commission on Higher Education has appointed Healthcare Management International (HCMI) as their sole authorized representative of India.
- b. HCMI Mission is to provide students with an opportunity to attain quality education overseas by introducing them to reputable universities, thus, allowing them to make apt choices. HCMI do this by partnering with reputable universities that deliver relevant, up-to-date knowledge.
- c. Access to quality medical education
- d. Information packages on courses and fee structures.
- e. Guidance for loans through trusted banks, if required.

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- A f. Information on eligibility requirements.
g. Guidance in processing student visa.
h. Counselling in making an apt decision.
i. Step by step guidance through the application process.”
- B 3. The respondent joined the College upon receiving the offer letter dated 31.08.2007. Vide Resolution No. 583 of 2007 of the Commission on Higher Education (CHED), the College got the application for approval to offer MBBS programme effective from 2007-2008.
4. The respondent joined the College, which was arrayed as
- C respondent No. 2, and set *ex-parte* before the Consumer Disputes Redressal Forum, U.T. Chandigarh. By the resolution dated 22.09.2008, the Republic of Philippines approved to abolish the MBBS programme from the School Year (S.Y.) 2008-2009 making it applicable to the students who got admitted for the year 2007-2008. The following is the resolution passed:
- D

Republic of the Philippines

OFFICE OF THE PRESIDENT

COMMISSION ON HIGHER EDUCATION

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EXCERPTS FROM THE MINUTES OF 321TH REGULAR
COMMISSION MEETING HELD ON THE 22ND DAY OF
SEPTEMBER 2008 AT HEDC CONFERENCE ROOM, HEDC

F BUILDING, C.P. GARCIA AVE. U.P. DILIMAN, QUEZON
CITY

RESOLUTION NO. 491 – 2008

G “*WHEREAS Republic Act No. 2382 otherwise known as the medical Act of 1959 prescribes among other things the minimum required curriculum for the degree Doctor of Medicine (MD) which is a bachelors degree in science or arts;*

H *WHEREAS, the primary medical degree to practice medicine in the Philippines is the degree Doctor of Medicine (MD);*

WHEREAS, the Bachelor of Medicine, Bachelor of Surgery (MBBS) is a medical degree offered in countries like Bangladesh, India, Nepal, Pakistan and Sri Lanka, which requires completion of Grade XI and XII as minimum requirement for entry into this program; A

WHEREAS, a number of medical schools in the Philippines have offered the MBBS program in spite of the absence of a CHED Memorandum Order prescribing the curriculum of such program; B

WHEREAS, the offering of such degree without the corresponding CHED-approved curriculum has led to concern and confusion regarding the capability to practice medicine in the Philippines and abroad; C

WHEREFORE, upon motion duly made, seconded and unanimously carried, the Commission En Banc adopted to resolve as follows: D

RESOLVE, AS IT IS HEREBY RESOLVED, that the Commission approves the abolition of Bachelor of Medicine, Bachelor of Surgery (MBBS) Program effective S.Y. 2008-2009.

RESOLVED FURTHER, that with regard to the existing students of the said program, the Technical Panel for Health Professions Education is requested to study, review and submit recommendation to the Commission En Banc for further decision, and that all medical schools be furnished copies of this resolution.” E

5. Consequent thereon, an alternative course was offered and the MBBS students were re-directed to the BS Biology, pursuant to the CEB Resolution No. 491-2008, with reference to such students who already got admitted/accepted under MBBS Course. For better appreciation, the aforesaid order is also placed on record: F

Republic of the Philippines G
OFFICE OF THE PRESIDENT
COMMISSION ON HIGHER EDUCATION
CHED MEMORANDUM ORDER

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- A No.46
Series of 2008
- SUBJECT: ABOLITION OF THE BACHELOR OF MEDICINE, BACHELOR OF SURGERY (MBBS) PROGRAM EFFECTIVE ACADEMIC YEAR 2008-2009.
- B *"In accordance with pertinent provisions of Republic Act 7722, otherwise known as the Higher Education Act of 1994 and pursuant to CEB Resolution No. 491-2008 dated September 22, 2008 the abolition of the Bachelor of - Medicine, Bachelor of Surgery (MBBS) program is hereby made effective School Year 2008-2009.*
- C *Colleges and universities which accepted MBBS students are instructed to comply with the following:*
- D *1. MBBS students shall be re-directed to the BS Biology Program.*
- E *2. HEIs that have no BS Biology and M.D. programs shall transfer their MBBS students to other HEIs that have recognized BS Biology and M.D. programs, listed in either WHO Directory or FAIMER and are willing to accept said students.*
- F *3. The abovementioned HEIs shall assess the subjects taken in Grades 11 and 12 as well as some subjects already taken in MBBS for credit towards BS Biology. In excess of the BS Biology requirements, some MBBS subjects may be credited towards the M.D. program after this group of students have passed in validating examination administered by the concerned HEIs.*
- G *4. There shall be no double crediting of subjects. Subjects in Grades 11 and 12 and those taken in the MBBS that were credited towards BS Biology shall no longer be credited to the M.D. program.*
- H *5. NMAT shall be required of students-in this group as it is required of other students for admission to the MD program.*
- I *6. The duration of the BS Biology program for this group of students should not be less than three (3) semesters and one (1) summer or a minimum total of ninety-two (92) units.*

For strict and immediate compliance. A

Quezon City, Philippines

October 20, 2008"

6. On the incipient view, the respondent did not take the aforesaid offer, but instead has chosen to come back to India with immediate action by filing his representation to the appellant. Thereafter, he lodged the complaint, notwithstanding the offer made by the appellant to mitigate the loss with respect to the additional one year, as offered by the Republic of Philippines for the bridge course after the abolition of the MBBS programme. B

7. All the Forums below, including the National Consumer Disputes Redressal Commission (hereinafter referred to as the 'National Commission'), rejected the appellant's response and accordingly it was asked to pay a sum of \$12000, apart from compensation and costs. Aggrieved thereby, the appellant is before us. C

8. The counsel for the appellant contends that though the complaint *per se* is not maintainable against the educational institution, apart from lack of territorial jurisdiction, the issue can be decided on merits as the matter is seized of by a larger Bench in Civil Appeal Diary No. 12901 of 2020 dated 15.10.2020 as to whether the educational institution is amenable or not, to be decided by a Consumer Forum. D

9. It is submitted that the appellant is only a facilitator and, in any case, it has no control over the decision of the Republic of Philippines. It is a policy decision taken by the said country and the fact that the respondent got admitted with the concerned College and completed one year is not in dispute. The decision of the Republic of Philippines (Office of CHED) being a subsequent one, there cannot be any liability fasten upon the appellant. E F

10. Before venturing into the above contentions raised, the scope of the appeal invoking Section 27A of the Consumer Protection Act, 1986 which was invoked at the time of filing of the appeal, requires consideration. Section 27A facilitates a further appeal to this Court against the order passed by the National Commission. Such an appeal can be adjudicated upon by this Court both on facts and law. Since the appeal provides for adjudication on the aforesaid two aspects, this Court can decide the matter not only on the law but facts as well. G H

- A 11. On merit, we find considerable force in the submission made by the learned counsel for the appellant. Though the documents would indicate that the appellant was acting on behalf of CHED also, it played no role in the policy decision made. The said documents are to be understood contextually. The role of the appellant stops with the admission being secured, which it did. The policy decision of the Republic of Philippines cannot be questioned before the Consumer Forum.
- B 12. In any case, such a policy decision cannot be the basis for seeking redressal against the appellant. The appellant cannot be considered to be a part of the Republic of Philippines or the Office of CHED for the policy decision changes made, which was made not pertaining to a single institution, but the whole Republic.
- C 13. On facts, the respondent did complete one year. At the time of admission and continuation in the year 2007-2008 there was no problem with the MBBS course. It was only in pursuance to the decision as aforesaid made by the Republic of Philippines, the students were offered to continue with the alternative course, which the appellant has not chosen whatsoever. This is an aspect that the Forums have failed to take note of in the correct perspective.
- D 14. On the said analysis, we are inclined to set aside the orders passed and dismiss the complaint. As there is no vicarious liability that can be fastened on the appellant and the appellant's role cannot be stretched to the policy decision of the Republic of Philippines, the appeal stands allowed.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeal allowed.