

Dr Umang Litoriya & Ors vs Union Of India & Ors on 9 April, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4252/2021 & CM APPL. 12933/2021

DR UMANG LITORIYA & ORS.

..... Petitioners

Through:

Mr. Apoorve Karol & Ms. Mithu Jain,
Advocates (M-9910558656)

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Jitesh Vikram Srivastava, Sr.
Panel Counsel with Mr. Vinod
Tiwari, GP and Mr. Prajesh Vikram
Srivastava, Advocate for R-1.
Mr. T. Singhdev and Ms. Michelle B.
Das, Advocates for R-2.
Mr. Kirtiman Singh and Mr. Waize
Ali Noor, Advocate for R-3.
Mr. Satvik Varma, Sr. Advocate with
Mr. Manish Dhir and Mr. Yogesh
Chawak, Advocates for R-4.
(M:9654978446 & 9910807134)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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1. This hearing has been done through video conferencing.
2. The present petition has been preferred by eight doctors who have qualified their MBBS courses and also obtained diplomas from the College of Physicians and Surgeons, Mumbai (hereinafter, 'CPS Mumbai').
3. The Petitioners wish to appear for the DNB-PDCET, 2021 which is conducted by the National Board of Examinations (hereinafter, 'NBE'). The challenge in this case is to Clause 4.8 of the

Information Bulletin for the said examination, published by NBE online on 25th March, 2021, by which the NBE has barred diploma holders from CPS Mumbai from applying for the DNB-PDCET.

4. The submission of Mr. Karol, ld. Counsel appearing for the Petitioners, is that such a clause has been included by the NBE for the first time and in the year 2019-20 and all previous years, the eligibility of the Petitioners was never in question.

5. The writ petition was firstly listed on 6th April, 2021, on which date a copy of this petition was served upon the NBE. The matter was again taken up on 7th April, 2021 on which date, after hearing parties for some time, the NBE was directed to place its stand on record. The NBE has filed its affidavit which has been perused.

6. Today, ld. Counsels for the Parties have all made their submissions. The stand of the Petitioners is that the DNB-PDCET, 2021 is an exam which has been conducted last in 2019 and, thereafter, it has been notified for being conducted on 9th May, 2021. The last date for submission of the applications is 14th April, 2021. The Information Bulletin which was published by the NBE on 25th March, 2021 includes a clause which renders diploma holders from CPS Mumbai ineligible for appearing for the DNB-PDCET examination. According to the Petitioners, this would result in enormous injustice to the Petitioners who have obtained their qualifications from CPS Mumbai and are eligible to practise as doctors with their diploma courses.

7. It is submitted on behalf of the Petitioners that even in previous years, similarly situated candidates from CPS have been permitted to appear for the DNB-PDCET examination. Reliance is placed upon the judgment of the ld. Division Bench of the Bombay High Court in W.P.(C) 5343/2018 titled Anita Kishanrao Videkar v. UOI & Ors. wherein the Bombay High Court permitted students, who had taken their admission prior to being held to be ineligible, to appear in the examination.

8. The stand of the NBE in its affidavit is that CPS Mumbai is not a recognised Indian University under clause 4.1 of the Information Bulletin. It is further submitted that even in the final examinations held for DNB/DrNB in December, 2020, such a clause holding that candidates from CPS Mumbai would be ineligible was published. It is further stated in the affidavit filed by the NBE that the NBE has repeatedly sought clarifications from the Ministry of Health and Family Welfare (hereinafter, 'MoHFW') as to whether the CPS Mumbai diploma qualifications are considered to be equivalent or not with their counterpart PG Medical Diploma qualifications of NMC/MCI. However, the MoHFW is yet to respond. The affidavit also places on record the correspondence entered into between the NBE and other authorities, including the MoHFW and the National Medical Commission.

9. The submission of Mr. Kirtiman Singh, ld. counsel for the NBE, is that as per Clause 4.1 of the Information Bulletin, unless and until the diploma qualifications granted by CPS Mumbai are held to be equivalent with their counterpart PG Medical Diploma qualifications of NMC/MCI, the Petitioners cannot be permitted to appear in the examination.

10. On behalf of the National Medical Commission, the stand taken in letter dated 20th November, 2020, candidates who have qualified from CPS Mumbai can register for practise, however, there is no notification in respect of their equivalence with their counterpart PG Medical Diploma qualifications of NMC/MCI. On behalf of CPS Mumbai, it is submitted by Mr. Verma, ld. counsel that the CPS Mumbai is a recognised institution. Government nominees are part of the Board of CPS Mumbai. The qualifications issued by CPS Mumbai are duly recognised and are equivalent to the counterpart qualifications recognised by NMC/MCI.

11. After hearing ld. counsels for the parties and perusing the record, especially the affidavit of the NBE, it is clear that until 25th March, 2021, when the Information Bulletin was published, diploma holders from CPS Mumbai appeared in the DNB-PDCET examination conducted in the previous years. There appears to be some doubt raised on behalf of the NBE as to whether the diploma qualifications awarded by CPS Mumbai are equivalent or not with their counterpart PG Medical Diploma qualifications of NMC/MCI. According to Mr. Kirtiman Singh, ld. counsel, several letters have been written by the NBE to the MoHFW, as also to the National Medical Commission. However, for whatever reasons, no stand has been taken as to the equivalence of the diplomas awarded by CPS Mumbai.

12. The urgency in the present petition, at this stage, is that the DNB- PDCET, 2021 examination is to be conducted on 9th May, 2021 and the last date for submission of applications is 14th April, 2021. The eligibility criteria, as stated in the Information Bulletin, reads as under:

"4.1. Candidates who have passed the final examination leading to the award of Post Graduate Diploma from Indian Universities which are duly recognized as per provisions of the NMC Act 2019 and the repealed Indian Medical Council Act 1956, Govt of India can apply for the DNB-PDCET 2021 in the same Broad specialty.

...

4.8. Candidates possessing Diploma qualifications awarded by the College of Physicians and Surgeons (CPS), Mumbai are not eligible to apply for DNB-PDCET till such time equivalence of CPS diploma qualifications with their counterpart PG Medical Diploma qualifications of NMC/MCI (as per PGMER, 2000) is confirmed by the Govt of India i.e. CPS diploma qualifications are equivalent to corresponding PG Diploma qualifications of NMC/MCI."

13. There is no doubt that previously, Clause 4.8 was never part of the Information Bulletin and only Clause 4.1 prescribed the eligibility criteria. In the past, candidates who are equally placed as the Petitioners, were being permitted to appear in the DNB-PDCET examination. A sudden embargo has been imposed on the Petitioners and if they are not permitted to file their applications, they would be losing out on an entire academic year, which would cause irreparable prejudice to the Petitioners. Going by the past conduct, where candidates who had obtained diploma qualifications from CPS Mumbai have been permitted to appear in the examination, and considering that the Petitioners have all obtained their diplomas prior to the publication of the Information Bulletin, this

Court is of the opinion that, at this stage, the Petitioners ought to be permitted to submit their applications on or before the deadline set out in the Information Bulletin i.e., 14th April, 2021. If the Petitioners have already submitted their applications, the same shall be accepted by the NBE and processed in time, along with the other applications. Admit cards shall also be issued. The same shall be subject to further orders in this petition.

14. In the meantime, the MoHFW shall file an affidavit placing on record its stand in respect of the equivalence of the Petitioners' courses on or before 3rd May, 2021. The National Medical Commission and CPS Mumbai are also permitted to file their affidavits on or before 3rd May, 2021.

15. List for hearing on 4th May, 2021.

PRATHIBA M. SINGH, J.

APRIL 9, 2021 dj/T