

Dr. B. Srinivas Vs. Dr. P. Krishna Malakonda Reddy and Others

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Court : Andhra Pradesh

Decided On : Apr-13-2001

Reported in : 2001(3)ALD490; 2001(3)ALT521

Judge : S.B. Sinha, CJ and; B. Subhashan Reddy, J.

Acts : [Indian Medical Council Act, 1956](#) - Sections 2, 20 and 33; Andhra Pradesh Regulation - Rule 5; Andhra Pradesh Education (Regulation of Admission into Speciality Courses in Medical) Rules, 1983; Andhra Pradesh Education Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 - Sections 3 and 15; Indian Medical Council Act, 1933 - Sections 10-A, 12, 13, 14, 16, 17, 18 and 19

Appeal No. : WA No. 1408 of 2000

Appellant : Dr. B. Srinivas

Respondent : Dr. P. Krishna Malakonda Reddy and Others

Advocate for Def. : Mr. K. Lakshmi Narasimha, ;Mr. K.G.K. Prasad and ;Mr. S. Niranjan Reddy, Advs.

Advocate for Pet/Ap. : Mr. Notty Rama Mohan Rao, Adv.

Judgement :

ORDER

B. Subhashan Reddy, J

1. This writ appeal is preferred against the judgment dated 6-11-2000 of the learned single Judge rendered in WP No.8046 of 2000.

2. Respondent No.3 in the said writ petition is the appellant herein, whose admission to super-speciality course in Cardiology (Doctor of Medicine) for the year 2000-2001 was annulled by the impugned judgment. The question for consideration before the learned single Judge was regarding the qualification for admission into the above course and as to whether the Diploma of National Board of Examinations (DNB) conducted by the National Board of Examinations, New Delhi is equivalent to MD/MS. Treating DNB as equivalent, admission into DM course for 2000-2001 was granted by NTR University of Health Sciences - 2nd respondent in this Appeal. The same was questioned by the writ petitioner (1st respondent before us) on the ground that for the purpose of admission into the said course and according to the rules framed governing the admission, DNB is not an equivalent qualification to MD/MS entitling the appellant for seeking admission and the said contention having been upheld by the learned single Judge, the writ petitioner was granted admission pursuant to the direction in the writ petition, and had been attending the classes in DM Course displacing the appellant. When the writ petition was originally filed, the NTR University of Health Sciences, the Principal, Osmania Medical College and the writ appellant were the parties. But, the Medical Council of India, as also the National Board of Examinations were impleaded by order of the learned single Judge dated 25-7-2000 passed in WPMP No. 12022 of 2000. While the NTR University had supported the plea taken by the writ appellant that DNB is an equivalent qualification to MD/MS, the Medical Council had supported the plea of the writ petitioner that it is not so and made a distinction that DNB is only recognised as a qualification for teaching purposes and not for admission to DM course and the said plea made by the writ petitioner and supported by the Medical Council was upheld by the learned single Judge.

3. Mr. Nooty Ram Mohan Rao, the learned Counsel appearing for the appellant, strenuously contends that the learned single Judge committed an error in harping

upon the Andhra Pradesh Education (Regulation of Admission into Speciality Courses in Medical) Rules, 1983, which have been framed in exercise of the powers under Section 3 read with Section 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and stressing on the letter dated 28-11-1994 addressed by the Medical Council to the Registrar of the University of Health Sciences, Vijayawada, submits that the DNB qualification is equivalent qualification to that of MD/MS qualification and as such, the appellant was rightly admitted to the Course of Doctorate of Medicine and that the statute of Andhra Pradesh or the rules made thereunder mentioned supra, cannot operate in view of the above clarification issued by the Medical Council. He also submits that Section 20 of the said Act is a special provision and deals with Post-graduate Medical Education, while Section 33 of the said Act is only a rule making power and in between a special provision contained under Section 20 and a general provision under Section 33, basing on the maxim generalis speciality derogant, the above letter dated 28-11-1994 of the Medical Council prevails and that the University had rightly approved the same and the State Government has no say in the matter. It is submitted that after the enactment of 1986 Act, 1983 Act has lost its significance, that the University was entitled to adopt its own procedure and as the DNB was held to be equivalent to MD/MS, the admission of the appellant was quite in order and that it was not liable to be interfered with. Stress is laid on subsection (5) of Section 20 of the Act seeking to interpret that any opinion of the Post-Graduate Committee is final and binding without necessity of undergoing the regulation making process under Section 33 of the Act. This argument is supported by Mr. K.G.K. Prasad, the learned Counsel appearing for the 2nd respondent-University of Health Sciences.

4. On the other hand, Mr. K. Lakshmi Narasimha, the learned Counsel appearing for the 1st respondent writ petitioner countered the said argument stating that 1983 Act still operates, that the rules framed under the said Act are based on the regulations made by the Medical Council under Section 33 of the Act, that a mere letter or clarification by the Medical Council under Section 20 of the Act cannot operate as a regulation under Section 33 and that any decision taken by the Medical Council has to undergo the process of transforming the same to Regulation under Section 33 and has to be gazetted so as to have a binding force.

This stand of the 1st respondent-writ petitioner is supported by the learned Counsel appearing for the Medical Council of India - 4th respondent herein.

5. Though DNB qualification has been declared to be equivalent to MD/MS, the crux of the problem is whether the same is to be construed as equivalent for appointment for teaching purposes only and not for admission to DM course. To dwell on this, interpretation of some of the provisions of Medical Council Act assumes importance. It is needless to mention that Medical Council, which has been constituted under the [Indian Medical Council Act, 1956](#), is entrusted with the functions of granting permission for establishment of the Medical Colleges, prescription of minimum standards of medical education as also recognising the qualifications in Medicine, be it graduation or post-graduation and related purposes.

6. The [Indian Medical Council Act, 1956](#) (hereinafter referred to as 'the Act') was enacted seeking to amend the Indian Medical Council Act, 1933 and it underwent further amendments from time to time. Section 10A, which has been incorporated by amendment, contains a non-obstante clause and prohibits establishing a Medical College or opening a new course or increase its admission capacity without the previous permission of the Central Government. Any qualification acquired in violation of the provision is void under Section 10B of the Act. Only such Medical Institutions which are established in consonance with Section 10A of the Act can confer qualifications and only such qualifications which are enumerated in the First Schedule shall be treated as recognised qualifications. Sections 12 and 14 of the Act deal with the reciprocity in recognising the medical qualifications vis-a-vis foreign countries. Section 13 is an exception to Section 10A and permits recognition of medical qualifications even mentioned in Parts I and II of the Third Schedule, subject to the satisfaction of the conditions stated therein. Section 15 deals with the rights of the persons qualified to practise medicine and the penalties in breach thereof. Section 16 obligates Medical Institutions/ Universities to provide information to the Medical Council as may be requisitioned by the latter regarding the courses of study, examinations undergone, periods of courses of study and examinations were undergone and other relevant information concerning the requisites of valid conferment of medical qualifications. Section 17

empowers to cause inspection for being satisfied about the standards of medical education, adequacy of staff, equipment, accommodation, training and other facilities provided, reflecting on the efficiency of every examination. Section 18 vests the Medical Council to appoint visitors over the inspecting staff appointed under Section 17 and to countercheck the report under Section 17. Section 19 authorises the Medical Council to deal with the errant Medical Institutions/ Universities to report for derecognition of the medical qualifications conferred by the latter and the intervention of the Central Government. Section 19A empowers the Medical Council to prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than Post-graduate medical qualifications) by Universities/Medical Institutions in India. To achieve the said minimum standards, the Council has to frame regulations. Firstly, the draft regulations have to be sent to the State Government and after getting their comments and making such amendments as may be necessary, the final regulations have to be sent to the Central Government for sanction and after such sanction, they are gazetted by the Central Government and then they become the statutory regulations under Section 33 of the Act. Section 20 of the Act deals with the post-graduate medical qualifications. Medical Council prescribes standards of post-graduate medical education for the guidance of Universities including securing the uniform standards for post-graduate Medical Education throughout the country and for ensuring the same, a post-graduate Committee is constituted. The views and recommendations of the post-graduate Committee on all matters are placed before the Medical Council, which would make a scrutiny of the same. On such scrutiny, if the Medical Council does not agree with any of the views and recommendations of the post-graduate committee, the Medical Council cannot take any independent decision on such disagreeable views/ expressions and has to necessarily forward the matter with its comments for the decision of the Central Government.

7. Co-ordination and redetermination of standards in institutions for higher education or research and scientific and technical institutions is the legislative field of the Parliament as per Entry 66 of List I of Schedule VII of the Constitution of India. The Act falls under the said Entry. Before 42nd (Constitution) Amendment Act, 1976, education including technical education, medical education and

Universities, subject to the provisions of Entries 63, 65 and 66 of List I, was the State subject under Entry 11 of List II. But, consequent to the said amendment, the above Entry was omitted from List II and was transferred to the Concurrent List as Entry 25. The scope and object of the Act was the subject-matter of decisions in several cases, both by the Apex Court and the High Courts in India.

8. Coming to the relevant point revolving around Sections 19-A, 20 and 33 of the Act, the earlier view was that the Medical Council is only empowered to prescribe minimum standards, while the State Government can make rules/regulations on other aspects including medical admission and teaching jobs.

9. In *State of Madhya Pradesh v. K. Nivedita Jain*, : [1982]1SCR759 , the Supreme Court upheld the action of the State Government relaxing the conditions relating to the minimum qualifying marks in pre-medical examination for selection of students to Medical Colleges of the State of Madhya Pradesh in respect of candidates belonging to Scheduled Castes and Scheduled Tribes on the premise that Entry 66 in List I does not have any bearing on the question of selection of candidates to the Medical Colleges from amongst the candidates, who were eligible for such admission and that Entry 25 in List III is wide enough to include within its ambit the question of selection of candidates to Medical Colleges and there is nothing in Entries 63, 64 and 65 to suggest to the contrary. It was held that Regulation 1, which lays down the conditions or qualifications for admission into medical courses, comes within the competence, of the Medical Council under Section 33 of the Act and is mandatory, while the process and procedure for selection, which is covered by Regulation 2 is only directory and that the State is not precluded from making a suitable legislation including that of invocation of its executive power under Article 162 of Constitution of India. This was followed in *Ajay Kumar Singh v. State of Bihar*, : [1994]3SCR57 , holding that rules for admission to medical courses do not have any bearing on the standards set by the Medical Council. Similar was the view taken by the later Supreme Court judgment in *P.G. Institute of Medical Education and Research v. K.L. Narasimhan*, : AIR 1997 SC3687 . There was also another view taken by some decisions both of Apex Court and the High Courts that while the regulations made relating to Graduate Medical Courses in Section 19A of the Act are mandatory and those made referring to Section 20 are

directory. We need not elucidate all such decisions for the reason that an authoritative pronouncement has been made by a Constitution Bench of the Supreme Court with majority of 4:1 in *Preeti Srivastava v. State of Madhya Pradesh*, : AIR 1999 SC2894 , that standards of medical education take-in not only the courses of study set by the Medical Council but also several other aspects like (i) calibre of teaching staff, (ii) proper syllabus designed to achieve the high level of education in the given span of time, (iii) the student-teacher ratio, (iv) the ratio between the students and the hospital beds available to each student, (v) the calibre of the students admitted to the institutions, (vi) Equipment of laboratory facilities or hospital facilities for training in the case of Medical Colleges, (vii) adequate accommodation for the colleges and the attached hospitals, and (viii) the standard of examination held including the manner in which the papers are set and examined and the clinical performance is judged. Ultimately, it was held by the Supreme Court that prescription of qualifying marks for admission in Medical courses has nexus to the object of achieving the minimum standards of education and that the said qualifying marks cannot be lowered by the State authority and that is a matter to be considered only by the Medical Council by way of framing regulations under Section 33 of the Act. Dealing with Section 20 of the Act, the Supreme Court held that the Medical Council is empowered to prescribe, inter alia, standards of post-graduate medical education and in exercise of the powers under Section 20 read with Section 33 of the Act, the Medical Council of India has framed regulations governing post-graduate medical examinations and that the said regulations are binding and the States cannot, in exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the Regulations framed by the Medical Council of India for post-graduate medical education. It was also held that since the standards laid down are in the exercise of power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government and that the power of the States under Entry 25 of List III is subject to Entry 66 of List I and that in any event, the State is not having the exclusive power to frame the rules and regulations pertaining to education since the subject is in the concurrent list and any power exercised by the State under Entry 25 of List III shall always be subject to any existing relevant provisions made in that connection by the Union

Government, subject, of course, to Article 254.

10. Thus the settled law is that the regulations framed by the Medical Council even relating to admission to Medical courses including that of post-graduate medical education derive power from Sections 19A and 20 of the Act and to the extent of repugnancy, the law made by the States in that regard shall be non-est and inoperative.

11. The Medical Council of India has framed Regulations under Section 33 of the Act. Clause (C) thereof reads:

'C. Specialities in which a candidate shall have MD/MS in any of the subjects noted against each or MRCP/FRCS before taking up further specialisation or degree in the following:

Prior Requirement

(1) to (8) (9) Cardiology M.D. (Medicine) M.D. (Paediatrics)'

Rule 5 of the Andhra Pradesh Regulation of Admission to Super Specialities in the Medical Colleges Rules, 1983, dealing with eligibility prescribes M.D. General Medicine or Paediatrics as the prior qualification for admission into the Course of D.M. (Cardiology). Apart from the fact that the University cannot make any deviation from the prescription of qualifications under the A.P. Regulation of admission to Super Specialities in the Medical Colleges Rules, 1983, the University's prescription of DNB qualification as eligible qualification for admission into D.M. (Cardiology) runs contra to the one prescribed by the Medical Council of India stated above and applying the dicta laid down by the Supreme Court in Preeti Srivastava's case (supra), the said prescription of DNB qualification by the University is void and non-est. The A.P. Act of 1986 is no way concerned with the prescription of qualification for admission into super-speciality courses and still A.P. Act of 1983 and the rules framed thereunder operate in the area of admission into super-speciality courses.

12. The further question which arises is whether any directive or clarification issued by the Medical Council to any University like in the instant case can operate

as a regulation without undergoing the process of Section 33 of the Act?

13. If Section 20 of the Act operates independently of Section 33, then the maxim *generalis specialia derogant* is applicable. Section 20 of the Act reads;

'20. Post-graduate Medical Education Committee for assisting Council in matters relating to post-graduate medical education :--(1) The Council may prescribe standards of post-graduate medical education for the guidance of Universities, and may advise Universities in the matter of securing uniform standards for post-graduate medical education throughout India, and for this purpose the Central Government may constitute from among the members of the Council a Post-graduate Medical Education Committee (hereinafter referred to as the Post-Graduate Committee).

(2) The Post-graduate Committee shall consist of nine members all of whom shall be persons possessing post-graduate medical qualifications and experience of teaching or examining post-graduate students of medicine.

(3) Six of the members of the Postgraduate Committee shall be nominated by the Central Government and the remaining three members shall be elected by the Council from amongst its members.

(4) For the purpose of considering postgraduate studies in a subject, the Post-Graduate Committee may co-opt, as and when necessary, one or more members qualified to assist it in that subject.

(5) The views and recommendations of the Post-graduate Committee on all matters shall be placed before the Council; and if the Council does not agree with the views expressed or the recommendations made by the Postgraduate Committee on any matter, the Council shall forward them together with its observations to the Central Government for decision'.

Sub-section (1) of Section 20 of the Act empowers the Medical Council to prescribe standards of post-graduate medical education for the guidance of Universities and advise the Universities in the matter of securing uniform standards for post-graduate medical education throughout the country. There is no scope for

a single University to address the Medical Council and the Medical Council responding to the same and the decision/opinion whatever name called, becomes a law on the subject. Section 2(g) of the Act defines the word 'prescribed' as prescribed by regulations. Sub-section (5) of Section 20 on which much reliance is placed to invoke the maxim *generalis specialia derogant* only means that should the Medical Council does not concur with the views expressed or recommendations made by the Post-graduate Committee on any matter, it cannot take a decision annulling or varying the said views expressed or recommendations made by the Postgraduate Committee, but with its comments has to forward to the Central Government for decision. It is so clear and unambiguous from the reading of the said sub-section (5) that the ultimate obiter in the matter of prescription of standards of post-graduate medical education for the guidance of Universities is the Central Government and it is for the Central Government to accept either the views of the Medical Council or the Post-graduate Committee in whole or part and after such decision is taken, the same emerges as a regulation under Section 33 of the Act. Under the scheme of the Act, the Central Government is made the ultimate authority, but its authority is controlled making it obligatory to take the opinion of the Medical Council and likewise, the Medical Council's power to frame regulations is fettered with the requirement of taking prior sanction of the Central Government. Section 20 of the Act cannot be read in isolation and it has to be read only with reference to Section 33 of the Act. The very object of the Parliament in enacting Section 33 is to channelise the framing of regulations to give effect to the statutory provisions including Section 20 of the Act. Our view is fortified by several decisions in this regard.

14. In *Diploma in Medical Practice Association, Nagpur and others v. The Medical Council of India and others*, ILR 1970 Bom. 223, a Division Bench of Nagpur Bench of Bombay High Court held 'a resolution passed by the Medical Council prescribing standards of medical education under Section 19A of the Act does not become a regulation under Section 33 of the Act It is undoubtedly true that the opinion of an exalted body consisting of professional experts in the matter of medical education would be received with respect, and obviously for that purpose the Legislature made it obligatory on the Central Government to have the benefit of such consultation and opinion. But as far as we can see throughout the Act as it

then was till the amendments were made in 1964, the ultimate authority to take decisions in these matters was with the Central Government. Even after the amendments made in 1964, the power that is given to the Council is the power to frame regulations, but the regulations become effective only after they are sanctioned by the Central Government'.

15. In *Km. Darsha Ahuja v. Agra University*, : AIR1982 All359 , a Division Bench of Allahabad High Court held that the regulations made under Section 33 of the Act have statutory force as a piece of subordinate legislation and are mandatory as non-compliance thereof entails in penal consequences.

16. In *Dr. H.K. Sahoo v. State of Orissa and others*, 1984 Lab.IC (NOC) 14 (Orissa), a Division Bench of the Orissa High Court held that even the recommendations of Medical Council do not have force of regulations till sanction of Central Government is obtained.

17. In *Dr. Sivasankar Lal Bajoria v. State of Orissa*, 1986 Lab.IC 1146, a Division Bench of the Orissa High Court was dealing with a case of the petitioner whose promotion was denied on the ground of his ineligibility in terms of the revised Regulations of 1974 framed by the Medical Council and the case of the petitioner was that 1974 Regulations seeking to revise 1970 Regulations have not been approved by the Central Government and hence did not partake the character of regulations under Section 33 of the Act and that still he was governed by 1970 Regulations, was upheld by the said Court and directed consideration of the promotion of the said petitioner in accordance with 1970 Regulations.

18. In *Dr. Arun H. Bakle v. Union of India*, : AIR1986 Bom230 , a similar question arose as to whether a letter issued by the Medical Council operates as a regulation. A Division Bench of the Bombay High Court held in the negative observing that the two essential requisites for promulgating any regulation are that (i) the Medical Council of India should first frame them as regulations, and (ii) obtain the previous sanction of the Central Government and then they should be published as regulations.

19. In *Mahesh Kumar Jindal v. Vice-Chancellor, Banaras Hindu University*, 1991 All.LJ 126, a Division Bench of Allahabad High Court ruled that the Medical Council's recommendations have no force of regulations as they were not approved by the Central Government and notified as regulations. The Division Bench went on to say 'Section 33 of the [Indian Medical Council Act, 1956](#), inter alia, authorises the Medical Council to make regulations generally to carry out the purposes of the Act with the previous sanction of the Central Government. On behalf of the petitioner, it is urged that the recommendations on Graduate Medical Education as adopted by the Medical Council of India are really regulations made under Section 33. We have not been shown any document to indicate that the said recommendations were adopted by the Medical Council of India with the approval of the Central Government. On the material on record, we are unable to record a finding that the recommendations have the force of regulations within the meaning of Section 33'.

20. In *Dr. Sadhna Devi and others v. State of U.P. and others*, 1997 (2) Supreme 350, it was held by the Supreme Court that insofar as the admission to Medical Courses are concerned, the regulations framed by the Medical Council of India under Section 33 of the Act will prevail over any law or executive instruction and in that case it was held that doing away with the minimum qualifying marks for reserved category being repugnant to the regulations framed by the Medical Council, is void.

21. In *Medical Council of India v. State of Karnataka*, : [1998]3SCR740 , it has been held by the Supreme Court that the regulations framed with the previous sanction of the Central Government have statutory force and if they fall within the purpose referred to under Section 33, they will have mandatory force. A reading of Paragraph 13 of the said decision makes it abundantly clear that the Medical Council can frame regulations only in terms of Section 33 of the Act and not otherwise and in fact, any regulation framed under Section 33 shall only be to give effect to the other provisions of the Act.

22. In view of what is stated supra, the irresistible conclusion is that the letter dated 28-11-1994 of the Medical Council of India cannot be construed as a

regulation under Section 33 of the Act and as such, is not having force of law. Consequently, DNB qualification cannot be treated as eligible qualification for admission into DM (Cardiology).The judgment of the learned single Judge is thus affirmed.

23. In the result, the writ appeal is dismissed. No order as to costs.

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