

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

WP(C) No. 2492/2022

*Reserved on: 15.04.2024*  
*Pronounced on: 09.05.2024.*

Mohammad Shafi Wani, ...Petitioner(s)  
Aged 49 years  
S/o Late Ali Mohammad Wani  
R/o House No. 10-B, Cooperative Colony,  
Peerbagh, Srinagar.

Through: Mr Hakim Suhail Ishtiaq, Advocate.

**Vs.**

1. National Medical Commission through its ...Respondent(s)  
Chairperson with its office at Satarkta Bhawan,  
G.P.O Complex Block A, INA, New Delhi 110023
2. J&K State Board of School Education through its  
Secretary with its office at Bemina, Srinagar.

Through: Mr T. M. Shamsi, DSGI with  
Ms. Zeenaz Basharat, Advocate  
Ms. Shagufta Maqbool, Advocate.  
Mr. M. I. Dar, Advocate.

**CORAM:**

**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE**

**JUDGEMENT**

1. In the instant petition filed under Article 226 of the Constitution, the petitioner has prayed for the following reliefs: -
  - i) By issuance of an appropriate writ or direction, including one, in the nature of Certiorari, the speaking order dated 04.01.2022 issued by the respondent No. 1 as also the communication dated 07.05.2002 issued by the erstwhile Medical Council of India be quashed.
  - ii) By issuance of an appropriate writ or direction, including one, in the nature of Mandamus, respondent-Commission be directed to grant permanent registration to the petitioner.
2. Facts as pleaded by the petitioner in the instant petition on the basis of which the aforesaid reliefs are being prayed, are that upon passing of Class 12<sup>th</sup> examination by the petitioner from the Jammu and Kashmir State Board of School Education (for short the Board) respondent 2 herein, the petitioner pursued MBBS course in Ukraine and passed the same in the Month of June 2000 from the State Medical University of

Lugansk, Ukraine and thereafter came to be granted provisional registration vide certificate No. 15741 by the Medical Council of India (for short the MCI) under the provisions of Medical Council Act, 1956 (for short the Act of 1956), whereafter the petitioner completed his rotatory internship programme at Government Medical College Srinagar and subsequently after completion of the said internship applied to the MCI for grant of permanent registration under the Act of 1956, complete in all respects annexing all certificate/documents thereof, however, the petitioner did not receive any intimation pertaining to the grant of said permanent registration from the MCI for quite some time compelling him to visit the office of MCI wherein the then Deputy Director asked the petitioner to meet a clerk namely Ashwani Kumar who demanded the petitioner Rs.50,000/- as bribe for processing his case and being aggrieved of non-consideration of his case for grant of aforesaid permanent registration, the petitioner filed OWP No. 815/2009 before this Court wherein the reply filed thereto, the MCI stated that the petitioner had submitted 10+2 pass certificate issued by the Bihar Intermediate Education Council, Patna which was found to be fake resulting into cancellation of his provisional registration certificate besides registration of a case/FIR. The said petition remained pending before this Court and in the meantime, the petitioner became ineligible to seek employment anywhere in the Country or outside the Country on account of non grant of permanent registration to him by the MCI though the said petition came to be disposed of by this court on 24.10.2019 with a direction to the petitioner to make a representation before the respondents for seeking redressal of his grievance whereafter the petitioner filed review petition bearing RP No. 94/2021 before this Court on the ground that erstwhile MCI stands replaced by the National Medical Commission (for short the NMC) and accordingly, sought a direction in the name of NMC instead of MCI whereupon this Court allowed the review petition on 28.09.2021 with liberty to the petitioner to represent before the NMC, whereafter the petitioner submitted a representation before the NMC through post on 07.10.2022 followed by service of a legal notice dated 16.02.2023

- through post as well, whereafter the NMC in terms of order dated 04.01.2022 followed by communication dated 07.05.2022 (hereinafter for short the order/communication) rejected the request of the petitioner for grant of permanent registration inasmuch as cancelled and withdraw the provisional registration of the petitioner.
3. The petitioner has maintained the instant petition on the grounds that impugned order/communication have civil and penal consequences upon the life and career of the petitioner as the same had been issued by exercise of arbitrary, power, without application of mind and without notice and an opportunity of hearing to the petitioner.
  4. Respondents NMC have filed reply to the petition wherein the petition has been opposed stating therein that the petitioner while applying for grant of a registration before the MCI had submitted marks certificate of Class 10+2 issued by the Bihar Intermediate Education Council, Patna which certificate upon verification was found to be fake and accordingly, provisional registration of the petitioner came to be cancelled vide letter dated 07.05.2022 besides asking the Deputy Commissioner of Police (Crime) Police Headquarter, I.P. Estate New Delhi, in terms of communication dated 05.05.2022 to register an FIR against the petitioner and therefore in view of same, the petitioner is neither entitled to registration nor any relief in the instant petition.
  5. The respondent Board in its reply filed to the petition has stated that class 10+2 certificate dated 30.03.2022 issued in favour of the petitioner by it is genuine and that the petitioner has obtained 294/600 marks in the said examination.

**Heard counsel for the parties and perused the record.**

6. Counsel for the petitioner while making his submissions reiterated the contention raised in the petition and would deny that the petitioner had submitted any fake certificate before the MCI as he have had passed class 10+2 examination from the respondent Board and on the strength of the said certificate alone he had applied for registration being evident from the declaration form submitted by him before MCI after completion of rotatory internship. Counsel for the petitioner would further submit that the petitioner had filed an application for

provisional registration in the year 2000 and that during the pendency of the instant petition even passed the screening test conducted by NMC in December 2022.

Counsel for the petitioner while referring to the reply filed by the NMC would also submit that the application form annexed with the reply filed by NMC also does not reflect that the petitioner had applied for registration on the basis of Bihar Intermediate Education Council, Patna certificate and would further contend that the NMC did not place on record any FIR claimed to have been registered against the petitioner and would lastly submit that the case of the petitioner in the matter of registration stands covered by the judgement passed by the Apex court in case titled as “**Medical Council of India Vs. India Doctors from Russia Welfare Association and others**” reported in 2002 (3) SCC 696 as also the judgement passed by this court in case titled as “**Dr. Shahnaz Dar Vs. Medical Council of India and Ors**” reported in 2010 (II) SLJ 542 upheld by Division Bench in case titled as “**Medical council of India Vs. Dr. Shahnaz Dar**” reported in 2012 (1) SLJ 340 and case titled as “**Mashooq Ali Sofi Vs. State of J&K and Ors**” reported in 2018 (1) JKJ 332.

7. **On the contrary** counsel for the respondents NMC would controvert the submissions made by counsel for the petitioner in line with the reply filed to the petition. And would pray for dismissal of the petition.
8. In view of the facts and circumstances obtaining in the matter inasmuch as the respective pleadings of the parties, the moot point that emerges for consideration of this Court would be as to whether the NMC was justified in rejecting the application of the petitioner for accord of permanent registration inasmuch as to cancel/withdraw the provisional registration accorded earlier in his favour.
9. It is the positive case of the petitioner that he passed class 10+2 examination from the respondent Board and thereafter proceeded to pursue MBBS course in Ukraine and upon his return submitted his application form on 24.10.2020 for grant of provisional registration which came to be accorded in the year 2003, whereafter he applied for

grant of permanent registration specifically mentioning therein the form that he has passed class 10+2 examination from respondent Board and as such, had no occasion to refer to the certificate of the Bihar Board, while further specifically pleading in the petition that an officer of the respondent 1 named in the petition demanded bribe from his and in default thereof involved the petitioner in a frivolous case having not been specifically denied by respondents.

In view of the aforesaid position it would neither be within the domain of this Court nor will this Court venture into the controversy as to how the said alleged fake certificate of Bihar Board came on the records of respondent 1 herein

10. With regard to plea of the petitioner that he was never issued any notice or afforded an opportunity of hearing by the respondent 1 while issuing impugned order dated 04.01.2022 as also impugned communication dated 07.05.2022, nothing is forthcoming from the voluminous reply filed by respondent 1 to show that the petitioner was ever issued a notice or provided an opportunity of hearing before issuance of impugned order dated 04.01.2022 or the impugned communication dated 07.05.2022, thus, the said action of the respondent 1 cannot, but be said to be violative of the principle of natural justice owing its origin to Article 14 of the Constitution.
11. Besides without placing reliance on the judgement of this Court referred to by counsel for the petitioner and noticed in the preceding paras, this Court is of the opinion that the instant petition can be settled in light of the judgement of the Apex Court passed in **Indian Doctors from Russia Welfare Association** case supra also referred by counsel for the petitioner.

In the judgement supra, the Government of India placed certain guidelines before the Hon'ble Apex Court to regulate the grant of registration of such doctors who completed the MBBS degree prior to March 15, 2001 and the Apex court in exercise of powers under Article 141 of the Constitution of India, approved the said guidelines holding same applicable to all such doctors who were similarly situated whether they were parties before the Apex Court or not. A

reference to the said guidelines hereunder being relevant herein becomes thus imperative: -

- (a) The case of all persons who applied for registration to MCI prior to 15.3.2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following: -
- (i) Those candidates who obtained degrees where the total duration of study in recognized institutions is less than six years (i.e. where a part of the study has been in unrecognized institutions, or the total length of study in a recognized institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in recognized institution plus the internship, would be seven years, which is the requirement even otherwise.
  - (ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognized by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.
- (b) All students who have taken admission abroad prior to 15.03.2002 and are required to qualify the Screening Test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the Screening Test even if they also come in the categories of circumstances contained in A(ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15.03.2002 shall be permitted to appear in the Screening Test in relaxation of this requirement provided he had taken admission in an institute recognized by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15.03.2002. From 15.03.2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.
- (c) The categories of students not covered in A(i) and (ii) above and whose entire period of study has been in medical college not recognized by MCI, will be allowed to appear in the Screening Test for the purpose of their registration provided they fulfill all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be qualification recognized for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling the minimum eligibility qualification laid down by MCI for taking admission in an undergraduate medical course in India. They shall not be entitled for any relaxation.

Having regard to the aforesaid guidelines, it is manifest beyond any doubt that the petitioner is eligible for grant of registration, irrespective of the fact as to whether the petitioner was ineligible for registration or not at the time when he filed the application in view of

him having obtained 294/600 (49%) marks in 10+2 examination from the respondent Board.

12. For what has been observed, considered, and analyzed hereinabove, inasmuch as considering the fact that the petitioner has completed his MBBS degree way back in the year 2000 and has been litigating before this Court for more than a decade, this Court deems it appropriate to dispose of the instant petition in the following manner:-

- (i) By issuance of a writ of Certiorari, the impugned order dated 04.01.2022 as also the impugned communication dated 07.05.2002 are quashed.
- (ii) By issuance of a writ of Mandamus, the respondent 1 NMC is commanded to effectively consider the case of the petitioner for grant of permanent registration in terms of the provisions of the Act of 1956 which was in force at the time the petitioner submitted his application, as expeditiously as possible preferable within a period of 8 weeks from the date a copy of this order is served by the petitioner upon respondent 1 and in the said process shall also offer an opportunity of hearing to the petitioner.

13. Disposed of.

**(JAVED IQBAL WANI)**  
**JUDGE**

**SRINAGAR**

09.05.2024

*Ishaq*

*Whether order is reportable? Yes*  
*Whether approved for reporting? Yes*