

Medical Council of India and Another

Vs

State of Rajasthan and Another

Civil Appeal No. 2551 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

15.01.1996

JUDGMENT

1. Leave granted.

2. We have heard learned counsel for the appellant-Medical Council of India as well as learned counsel for the first respondent. The second respondent has been avoiding service of notice and, therefore, we had passed an order on January 8, 1996 that the notice must be deemed to have been served on him. The only question is : Whether the second respondent is entitled to practise as registered medical practitioner? Admittedly, the second respondent has done his M.Sc. (Medical Bio-Chemistry). He joined as Demonstrator and thereafter became professor in the Department of Bio-Chemistry. He, on 31-7-73, sought to have his name registered with the State Medical Register. When he was not allowed to practise Medicine on the basis of the above qualifications, he filed a writ petition in the High Court. The learned single Judge in Civil W.P. No. 1169/81 by an order dated February 3, 1992 allowed the writ petition and directed the appellant to enroll him as Medical Practitioner on the State Medical Register. An appeal filed against the said order in Special Appeal No. 179/1995 was dismissed vide order dated February 15, 1995 by the Division Bench of the High Court. Thus, this appeal by special leave.

3. Section 2(f) of the Indian Medical Council Act, 1956 (for short, 'the Act') defines "Medicine means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. Section 2 (h) defines "Recognised Medical Qualification" to mean any of the medical register maintained by the Council. Though M.S.C. (Bio-Chemistry) is included in the Schedule, but unless the second respondent has qualified himself in Medicine, he is not eligible to be registered as Medical practitioner. Section 15(1) of the Act says that subject to the other provisions contained in this Act, the medical qualifications included in the Schedule shall be sufficient qualification for enrolment on any State Medical Register. Section 26 postulates thus :

"26. Registration of additional qualification(1) If any person whose name is entered in the Indian Medical Register obtains any title diploma or other qualification for proficiency in sanitary science, public health or medicine which is a recognised medical qualification, he shall, on application made in this behalf in the prescribed manner be entitled to have an entry stating such other title, diploma or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.

(2) The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register."

4. It would thus be clear that the basic qualification of M.B.B.S as primary qualification is a pre-condition for a candidate for being registered in the State Medical Register maintained by the State Board. The second respondent does not have the basic qualification, his M.Sc. (Bio-Chemistry) cannot be considered to be basic qualification for practising as Medical Practitioner. The High Court has thus committed obvious error in allowing the writ petition and directing the appellant to register him as a Medical Practitioner.

5. The appeal is accordingly allowed. No costs. Appeal allowed.