

**JINADASA
VS
SRI LANKA MEDICAL COUNCIL AND OTHERS**

COURT OF APPEAL.
IMAM, J AND.
SRISKANDARAJAH, J.
CA 290/2005.
AUGUST 23,2004.
JULYM 27,2005.
AUGUST 23,2005.

Medical Ordinance, sections 19(c), 29(1)(iv)(cc) – Act 16 Examination-Recognition of foreign medical degrees, – Duty cast on the 1st respondent to permit the applicant to sit Act 16 Examination,

The petitioner having completed her Medical Course obtained the MBBS degree in 2004, from the Faculty of Medicine from the International Medical and Technological University of Tanzania (IMTU), which is recognized by the 1st respondent Medical Council.

The petitioner seeks a writ of mandamus directing the respondents to accept the application of the petitioner and admit her to the Act 16 Examination.

The 1st respondent Council opposed the application on the basis that the entire course was not followed at IMTU Tanzania, as para-clinical training was held in Gunton India, an off shore teaching centre.

HELD:

- (1) Under section 29(1)(b)(ii)(cc) of the Medical Ordinance, a citizen of Sri Lanka who holds a MBBS degree from a University of any other country other than Sri Lanka, which is recognized by the Sri Lanka Medical Council is required to sit and pass the special examination Act 16.
- (2) If the 1st the respondent Medical Council was not satisfied with the standards maintained at IMTU an application could have been made under section 19(c) to the Minister of Health for de-recognition.

As the 1st respondent has not sought to de-recognize the University, the 1st respondent Council is legally bound to recognize the Medical degree of IMTU.
- (3) It is also apparent that a Degree in Medicine and Surgery (MBBS) awarded by IMTU Dar-es-Salaam, Tanzania has been recognized by the 1st respondent Council from 1999 onwards.
- (4) There is no basis in fact or in law for the 1st respondent Medical Council to decline to carry out its statutory obligation to permit the petitioner to sit the Act 16 examination.

Application for a writ of mandamus.

Faiz Musthapha, P. C. with Faisza Markar and Thushani Machado for petitioner.

D. P. Kumarasinghe, P. C. with Shamindra Rodrigo for 1st respondent.

Shibly Aziz, P. C. with Senani Dayaratne and Sharmeen Ahamed for 2nd respondent.

12th September, 2005,
IMAM, J.

The Petitioner is seeking a mandate in the nature of a Writ of Mandamus directing the 1st and 2nd Respondents to accept the application of the Petitioner and to admit the Petitioner as a candidate for the special examination prescribed by the 1st respondent in terms of section 29(1)(iv)cc of the Medical Ordinance which is referred to popularly as "Act 16" Examination as a precondition for provisional registration as a Medical Practitioner to serve a period of internship in order to secure registration to practice. The Petitioner has obtained a Bachelors Degree (P1) in Medicine and surgery (MBBS-First Class) issued by the Faculty of Medicine from the International Medical and Technological University of Tanzania hereinafter referred to as (IMTU) on 17.04.2004 with regard to the Examination held in November 2003, which is recognized (P2) by the 1st Respondent Medical Council as required by section 29(2)(b)(iii)(bb)(i), and thus the question is whether the 1st respondent has a legal duty and is bound to register the Petitioner and permit her to sit the aforesaid examination. IMTU is a University recognized by the 1st Respondent from September 1999, with regard to the MBBS Degree, as illustrated by P2 which sets out the list of Foreign Medical degrees recognized under Act 16 of 1965.

In accordance with the Medical Ordinance section 29(1)A person shall, upon application made in that behalf to the Medical Council be registered as a Medical Practitioner. Under section 29(1)(b)(ii)cc of the Medical Ordinance, a citizen of Sri Lanka who holds the degree of Bachelor of Medicine of a University of any other country, other than Sri Lanka, which is recognized by the Sri Lanka Medical Council is required *inter alia*, to pass a special examination prescribed by the 1st Respondent to be registered as a Medical Practitioner.

In terms of the guidelines (P3) issued by the 1st Respondent to Medical graduates with foreign qualifications, an application should be submitted on a form titled "Recognition of degree or equivalent qualifications" together with the original and two photocopies of the degree to enable the applicant to sit the aforesaid Examination.

The Petitioner alleges that whenever she attempted to hand in her application for the said Examination, the Registrar refused to accept her application, alleging that part of the course followed by the Petitioner in India was not recognized by the 1st respondent. However in accordance with (P5) dated 31.07.2004 which is a letter sent by an officer of IMTU to the President of the 1st respondent, it is very explicitly pointed out that although the initial para clinical training of the Petitioner and some other students was held in Guntur, India which was an off-shore teaching centre, the syllabi at IMTU Dar-es-Salaam and Guntur were the same and that the Examinations held in Guntur were conducted by IMTU, Tanzania and certificates issued at Da-res-Salaam, copies of the relevant mark sheets being marked as C. This letter also confirms that the petitioner having successfully completed her para clinical training at Guntur, passed her examinations, and qualified as a Doctor, having been a student of IMTU, Dar-es-Salaam. Furthermore in accordance with (P2), a Degree in Medicine and surgery (MBBS) awarded by IMTU, Dar-es-Salaam, Tanzania has been recognized by the 1st Respondent from the year 1999 onwards, which recognition has not been repealed upto date. The Petitioner submits that she informed the Registrar that the teaching centre at Guntur had subsequently been closed down by IMTU Tanzania since May 2002, and that at the said premises a Medical college by the name of Kathuri Medical College had been established. The Petitioner avers that the 1st respondent insisted on inspecting the Guntur centre, although it had ceased to exist.

The 1st Respondent apparently is opposing the application of the Petitioner on the basis that the entire course was not followed by the Petitioner at IMTU, Tanzania. Besides (p2) which recognizes the MBBS degree, Tanzania since September 1999, by virtue of the letter dated 16.09.1999 sent by the 1st Respondent to the Dean of IMTU, recognition was granted to IMTU Medical school unconditionally, and no other material was produced in the objections filed by the Respondents. The 1st Respondent along with the written submissions sought to produce a photocopy of a letter (Y1) dated 20.09.1999, which is said to have been written to the Dean of IMTU College of Medicine by the 1st respondent. This letter however has not been supported by an affidavit, and has not been certified. Although the written submissions tendered by the 1st Respondent aver that it is only the College of Medicine, IMTU Dar-es-Salaam that is recognized by the 1st Respondent, (P2), by referring to "College of Medicine, International Medical and technological University, Dar-es-salaam, Tanzania", obviously the 1st Respondent would be interested in the College of medicine, as the 1st respondent is the Sri Lanka Medical Council. However in P2 IMTU has been referred to completely, which has not been de-recognized by the 1st Respondent subsequently.

The Petitioner having completed her Medical course obtained her MBBS Degree on 17.04.2004, having obtained a first class in the November 2003

Examination, after years of study at Tanzania and subsequent to pre clinical training at Guntur, which was supervised and examinations conducted by IMTU, Tanzania as Guntur is an of-shore teaching centre. Section 29(1) of the Medical Ordinance, states that “a person shall upon application made in that behalf to the Medical Council be registered as a Medical practitioner” if the conditions in section 29 are fulfilled. Section 29(1)(b)(ii) refers to foreign medical graduates. The Petitioner has obtained her degree by virtue of section 29(2)(b)(iii)(bb) of the Medical Ordinance which is recognized by the Medical Council for the purpose of this section, and hence the 1st Respondent cannot escape from the legal duty cast on it. There is no basis in fact or in law for the 1st Respondent to decline to carry out its statutory obligation, to permit the Petitioner to sit the 29(1)(iv)(cc) Special Examination of the Medical Ordinance, commonly referred to as the Act 16 Examination.

In the event of the 1st Respondent not being satisfied with the standards maintained at IMTU, an application could have been made under section 19C of the Medical Ordinance to the Minister of Health that the prescribed standards are not being maintained and recommended that such qualification shall not be recognized for the purpose of Registration under this Ordinance which has not been done. Hence the 1st Respondent is legally bound to recognize the Medical degree of IMTU as there has been no de recognition.

Justice A. R. B. Amerasinghe in his book titled “Judicial Conduct, Ethics and responsibilities” at page 284 states thus—

“The function of a Judge is to give effect to the expressed intention of Parliament. If legislation needs amendment, because it results in Justice the democratic processes must be used to bring about the change”. This has been the unchallenged view expressed by the Supreme Court of Sri Lanka for almost a hundred years.

For the aforesaid reasons this court grants the Petitioner the relief prayed for, and issues a Writ of Mandamus directing the 1st respondent to accept the application of the Petitioner, and admit the Petitioner as a candidate for the Special examination prescribed by the 1st Respondent in terms of section 29(1)(iv)cc of the Medical Ordinance. On an application by Learned President’s Counsel for the 2nd Respondent, the 2nd Respondent was discharged from this case and the connected cases. As CA,291/2005,

CA.292/2005 and CA.293/2005 are connected matters and counsel in these cases agreed that the Judgment given in this case would be binding in the other cases, the Petitioners in the aforementioned cases are granted the same relief prayed for, Writs of mandamus are granted as prayed for by the respective Petitioners without cost, and the 1st respondent Council is directed to admit the respective Petitioners as candidates respectively for the Special Act 16 Examination prescribed by the 1st respondent.

SRISKANDARAJAH, J. — I agree.

Application allowed.
