Problem of Unrecognized Medical Degree / Diploma Who is at fault?

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Abstract

Medical education is the subject matter of both Union and State Governments and Medical Council of India is the sole supervising body of medical education and maintaining its standard. Problem of recognition of medical degrees / diplomas is prevalent in almost all the States of India and in most of the medical specialties. Holders of unrecognized degree / diploma may face problem of employment / promotion, etc. Thus, leading to filing of litigations in the court, some of which are decided and others are still pending in the Indian Courts.

This paper deals with review of this problem, brief discussion of relevant court decisions, Government Orders and Medical Council of India (MCI) notifications, etc. thus, help in solving the problem to great extent by making concerned persons aware about the issue and to take initiative to solve the problem of very much public interest. **Key Words:** Unrecognized Medical Degree / Diploma, Employment, Promotion, Medical Council of India, Court.

Introduction:

The problem of recognition of degree / diploma and employment is not new issue as apparent from various courts' decisions and other relevant documents of Government and Medical Council of India (MCI). Since medical education is still in infancy in India as private medical colleges are mushrooming and as India is a developing economy many problems are bound to arise. This problem is prevailing in many States of India like Jammu & Kashmir, Himanchal Pradesh, Punjab, Haryana, Uttar Pradesh, Bihar, Tamil Nadu, Delhi, etc.

Author himself had received an interview call from the PGIMER, Chandigarh, for the post of Assistant Professor scheduled to be held on 06-12-2005, and concerned authority has asked for certificate from MCI in this regard as a condition to appear before the interview board. Similar is the position with the Union Public Service Commission (UPSC), New Delhi, which asks for letter of recognition of degree issued by the MCI before they allow appearing for the interview.

In a very interesting case in which a doctor, holder of M.D. (Pathology) awarded by M.L.B. Medical College, Jhansi, U.P., which is not recognized by the MCI. He was given appointment as Senior Lecturer at Government Medical College, Chandigarh on adhoc basis and continues his job for more than five years till he received a call of interview for the same post on permanent basis through UPSC, New Delhi. But unfortunately his candidature was rejected by the UPSC, after allowing him to appear for the interview on the ground of unrecognized degree.

In another more interesting case from Allahabad, U.P., one doctor, holder of Diploma Cardiology from G.S.V.M. Medical College, Kanpur, U.P., which is not recognized by the MCI, faced criminal charges and remain in prison for few months not under section 304-

A, IPC but under charges of 'culpable homicide not amounting to murder' i.e. under 304 IPC, part -I for the death of one of his serious patient, for no fault of him, but to hold unrecognized diploma awarded by a Government Medical College of U.P.

Employment/ promotion and unrecognized degree / diploma:

Various High Courts and Hon'ble Supreme Court of India on many occasions had ruled in favour of candidates possessing unrecognized degrees / diplomas like:

Judges, J.S. Khehar and Rajiv Bhalla of Punjab and Haryana High Court while delivering judgment on the issue of recognition of degree and problem of promotion on 09-02-2005, observed that "The fourth contention of the learned counsel for the respondent is that the petitioner has no locus stand to impugn the selection and promotion of respondent No. 3 Dr. S.S. Sangwan to the post of Dean (Medical) as the petitioner himself is ineligible for appointment by promotion to the aforesaid post under the 1988 Rules. In this behalf, the petitioner acquired the qualification of M.D. (Forensic Medicine) from the Medical College, Rohtak, and that he was awarded the aforesaid Postgraduate Degree, by the Maharishi Dayanand University, Rohtak. In this behalf, it is pointed out, that the qualification of M.D. (Forensic Medicine) awarded by the Maharishi Dayanand University, Rohtak, has not been recognized by the MCI. It is, therefore, asserted that the petitioner does not even fulfill the basic qualifications for the post of Dean (Medical). [Page No. 21-23] [1]

Court further observed that "So far as the fourth contention advanced on behalf of the respondent is concerned, reference will have to be made to the qualifications prescribed for appointment to the post of

JIAFM, 2007 29 (3); ISSN: 0971- 0973 appointment by promotion to the post of Dean (Medical). The instant objection was raised only at the hands of respondent No. 3. In view of the deliberations

recorded above, it is not possible for us to accept even the fourth contention (advanced by the learned counsel representing respondent No. 3) [Page No. 23] [1]

Recognition of degree and employment is not a new issue:

The problem is not a new issue as apparent from the Letter written by the Secretary, U.P., Sri G.K. Joshi, to all Heads of Departments and Principal, Heads of Offices. The contents of letter are as follows:

"Subject: Recognition of the degrees and diplomas awarded by the Universities established by law in India for purposes of recruitment to services under the State Government.

Sir,

I am directed to say that the question of recognition of the degree / diploma awarded by the Universities as established by law in India for purposes of recruitment to services and posts under the State Government has been under their consideration for some time past. In the light of the decision taken by the Government of India and in consultation with the Lok Seva Ayog, Uttar Pradesh [UPPSC] it has been decided that in the case of degree / diploma awarded by Universities in India which are incorporated by an Act of the Central or State Legislature, no formal orders recognizing such degrees / diplomas need be issued by Government. Such degrees / diplomas should be recognized automatically for purposes of employment under the State Government". [2]

In a case from Rajasthan, Court observed that "Post-graduate medical degree granted by a University duly established by statute in this country which has also recognized by the Indian Medical Council – Ipso facto to be regarded, accepted and treated as valid throughout our country – In absence of any express provision to the contrary, such a degree does not require to be specifically recognized by other Universities in any State in country before it can be accepted as a valid qualification for the purpose of appointment to any post in such a State be accepted as a valid qualification for the purpose of appointment to any post in such a State. [7]

Bench comprising of Judges A.D. Koshal, J., R.B. Mishra, J., V. Balakrishnana Eradi. The judgment of the Court was delivered by Eradi, J.

On March 3, 1972, the Rajasthan Public Service Commission (for short, 'the Commission') issued advertisements inviting applications for the recruitment of two Lecturers in Forensic Medicine for Medical College, Medical & Public Health Department in accordance with the Rules. [Para 5] [7] The appellant had, by then, obtained the M.D. degree in Forensic

the Dean (Medical), in Appendix 'B' of the 1988 Rules (details whereof have already been extracted above). The essential minimum qualifications for appointment to the post of Dean (Medical) comprise of three essential ingredients. Firstly, a basic University qualification included in the schedule to the Indian Medical Counsel Act, 1956, Secondly, M.D./M.S. or equivalent Postgraduate qualification, and thirdly, five years teaching experience as Professor (Medical). The fact that the petitioner possesses the first and third essential eligibility conditions is not disputed. The only issue which arises for determination is, whether the qualification of M.D. (Forensic Medicine) acquired by the petitioner in 1980 satisfies the second requirement in Appendix 'B' of the 1988 Rules, noticed above. In our view, the qualification of M.D. (Forensic Medicine) possessed by the petitioner has to be accepted as relevant qualification for satisfying the second requirement. Our aforesaid conclusion is based on firstly, on the fact that the qualification of M.D. / M.S. or equivalent postgraduate depicted as an essential qualification for appointment to the post of Dean (Medical), is a requirement in the verbatim, even for appointment to the post of Professor (Medical). The petitioner was appointed as Professor in the Institute of Medical Sciences as far back as on 1-06-1981. At the aforesaid juncture, the qualification possessed by the petitioner, was considered to be sufficient for appointment to the post of Professor. It is not open to the respondent at this juncture to assert, that the same postgraduate qualification, which was accepted to determine the eligibility of the petitioner for appointment to the post of Professor, is not acceptable for determining his eligibility for promotion to the post of Dean (Medical). Secondly, while Appendix 'B' of the 1988 Rules expressly indicates, that the basic University qualification possessed by an incumbent must be one of the qualifications included in the schedule to the Indian Medical Council Act, 1956, there is no such prescription / requirement in so far as the M.D. / M.S. qualification is concerned. It is, therefore, misconceived for the respondents to assert, that only such M.D. / M.S. qualifications are to be considered as valid for the purposes of eligibility as have been recognized by the Medical Council of India. Thirdly, the petitioner acquired the qualification of M.D. (Forensic Medicine) from the Medical College, Rohtak i.e. the very institute, wherein he is claiming appointment by promotion to the post of Dean (Medical). It is difficult to accept, that the respondent would not accept the postgraduate qualification acquired from the institute itself, as a valid postgraduate qualification for appointment to the post of Dean (Medical). In fact, it would be pertinent to mention, that the official respondents in the instant writ petition did not dispute the eligibility of the petitioner for

Medicine from the University of Bihar, Muzaffarpur in1970 and had been functioning as Lecturer in Forensic Medicine in one of the Government Medical Colleges in Rajasthan on a temporary and adhoc basis from December 31, 1970 onwards. [Para 6] [7]

In response to the aforesaid advertisement published by the Commission, the appellant applied for appointment to one of the posts. However, by the impugned letter (Annexure IV) dated July 21, 1973, issued by the Secretary of the Commission, the appellant was informed that his application for the post of Lecturers in Forensic Medicine was rejected since he did not possess the necessary academic qualification. A representation made by the appellant to the Public Service Commission for reconsideration of the matter did not meet with any favorable response and hence the appellant approached the High Court by filing the writ petition under Article 226 of the Constitution out of which this appeal has arisen. During the pendency of the writ petition, the Commission conducted the interview of the remaining candidates and selected respondents 3 and 4 for appointment to the two posts and on the basis of the said selection the State Government appointed respondents 3 and 4 as Lecturers. The appellant thereupon amended the writ or direction canceling the interview and selection conducted by the Commission as well as the consequential appointments given by the State Government to respondents 3 and 4 as Lecturers in Forensic Medicine. [Para 7] [7]

Court further observed that "The sole ground on which the appellant was treated by the Commission as ineligible for consideration was that the post-graduate degree in Forensic Medicine possessed by the appellant is not one awarded by the University of Rajasthan and the said degree has also not been recognized by the University of Rajasthan as an equivalent qualification. [Para 10] [7]

The University of Bihar, at Muzzafarpur is one duly established by statute and is fully competent to conduct examinations and award degrees, the degree of Doctor of Medicine (Forensic Medicine) M.D. The University of Bihar is included in the Schedule to the Indian Medical Council Act, 1956 as a degree fully recognized by the Indian Medical Council which is the paramount professional body set up by statute with authority to recognize the medical qualifications granted by any University or Medical Institution in India. [Para 11] [7]

The conclusion that emerges from the aforesaid discussion is that the appellant was fully qualified for being considered for appointment to the two posts of Lecturer in Forensic Medicine advertised by the Commission on November 16, 1972, and that the Commission acted illegally in treating the appellant as not being possessed of the requisite academic

qualification and excluding him from consideration on the said ground. [Para 13] [7]

Accordingly, we allow this appeal, set aside the judgment of the Division Bench of the High Court and restore the judgment of the Single Judge, subject to the modification that in carrying out the directions contained in the judgment of the learned Single Judge, the Commission should treat the appellant as a fully qualified candidate in the light of the finding recorded by us that at the relevant time the appellant possessed not merely the prescribed academic qualification but also the requisite experience of two year's medicolegal work. The appellant will get his costs throughout from respondents 1 and 2 in equal shares. [Para 14] [7]

In a case, Court observed that "Where the Postgraduate course was started by the Ranchi University with the consent of Medical Council of India and the State of Bihar had recognized such degree imparted by the Ranchi University, held, it could not be contended that degree obtained after pursuing said course was of no value as the same had not been recognized so far by the Medical Council of India". [8]

In another case, Court observed that "Thus, it was incumbent upon the respondent University to have awarded only that degree which is recognized one and to amend the degree from that of M.D. (Pathology and Microbiology) to M.D. (Pathology) as this is the only change in nomenclature of the degree. For the fault of the University, the students cannot be made to suffer. Since they have acquired qualification, degree in M.D. (Pathology and Microbiology) should be amended as the Schedule to Act of 1956, does not recognize the degree in M.D. (Pathology and Microbiology)". Court further observed that "The petitioner and such other similar students are being deprived of their right to education and other fundamental rights enshrined under Articles 14, and 21 of the Constitution of India which make it clear that the petitioner and such other students cannot be dealt with in such an arbitrary **manner.** The respondents are bound to act within the purview of Medical Council Act, 1956. **If the** degree is not amended, it may be detrimental to the students who have passed out examination by making hard efforts to obtaining the degree and their qualification would go in waste". [Para 8] [9]

Therefore, same action ought to have been taken by the respondent No. 1 University to amend the degree of the students who have

been taken by the University to amend the degree of the student who have passed prior to 1997 when it has decided to amend it **prospectively**. Though the University realized the situation and its mistake and they have passed the resolutions in this respect in 1997 the student of 1990 to 1996 are being still awarded by the degree with nomenclature on the basis of same course as M.D. (Pathology and Microbiology). The action taken is discriminatory. Right to Education is a fundamental right. Under Article 21 of the Constitution of India no one can be deprived of fruits of his hard labour in pursuit of degree in question by prescribing a wrong nomenclature. Medical Council had indicated it's willing to treat degree as one in M.D. in Pathology as same course which should have been enough for University to amend it and act like Devi Ahilya University, India. [Para 8] [9]

"....the stand of the M.P. Medical Council is proper that it only recognizes the degree which is in tune with the nomenclature mentioned in the Schedule". [Para 9] [9]

Mr. Arun Mishra, J. finally directed that "Thus, the communication of the University Annexure P-7 is quashed and the respondent No.1 University is commanded to amend the degree of the petitioner from that of M.D. (Pathology and Microbiology) to that of M.D. (Pathology). It is made clear that similar treatment be also given to the other similarly placed students by the respondent No. 1. In the facts and circumstances of the case, parties to bear their own costs. Petition allowed. [Para 10] [9]

A Bench comprising of Judges N.M. Kasliwal, J. and M.M. Punchi, J. delivered the judgment on April 26, 1991and observed that "The controversy has been raised before us that the M.Ch. degree course in Neurosurgery awarded by Rajendra Medical College, Ranchi University is not yet recognized for the purpose of Indian Medical Council Act, 1956 and a letter of MCI dated 27-02-1991 has been placed on record in this regard. Learned counsel for the respondent No. 5 has tried to contend that M.Ch. degree obtained by the appellant was of no value, as the same has not been recognized so far by the MCI. We find no force in this contention, as this course was started by the Ranchi University in 1980 with the consent of the Medical Council of India and the State

of Bihar has recognized such degree imparted by the Ranchi University and even before this Court learned counsel appearing for the State of Bihar accepted this position. We are not concerned in this case about the value of such degree for places outside State of Bihar, but so far the present case is concerned which relates to the post of Assistant Professor in Patna Medical College and Hospital, Patna which post is under the Bihar Government, no such objection can be maintained by the Respondent No. 5". [8]

Recent Developments:

In a recent case filed before Hon'ble Chief Justice Ajay Nath Ray and his companion Judge Jagdish Bhalla, of Lucknow Bench of Allahabad High Court, while delivering interim order [R-5] on April 20, 2005 observed that "This is a Public Interest Litigation (Writ Petition under Article 226 of the Constitution of India) by the writ-petitioners, which described themselves as Doctors. They are final year students of M.B.B.S. Course at B.R.D. Medical College, Gorakhpur. The main substance of the writ petition is that the Post Graduate courses of the said Medical College have been substantially de-recognized by the Medical Council of India but this fact notwithstanding, admissions are going on in these Colleges and the Post Graduate Medical Courses even now. We are informed from the Bar that counseling is on from this day, i.e. today with regard to such Post Graduate Medical Courses". [5]

Some other Colleges are also named in the petition like Maharani Laxmi Bai Medical College, Jhansi and S.N. Medical College Agra. As for as we have been able to gather today, these colleges are not legal personalities and are not Bodies Corporate, these are basically State instrumentalities. The State also appears to have issued directives to at least the B.R.D. Medical College, Gorakhpur, not to admit students and not to recognize students to Post Graduate Courses. [5]

The writ-petition is directed towards making the recognition available again to these colleges by increasing the teaching staff, making the Laboratories better equipped, and such like. We are told that a writ petition has also been filed in the Delhi High Court (since the Medical Council is in Delhi) and that in the said writ, orders have been passed calling for reports and for bettering of facilities and that the matter is due to be heard again on the 28th of this month (28-04-2005). [5] In these circumstances we admit the writ petition.

Until further orders of the Court the respondents, their servants, officers and agents, the respective colleges including B.R.D. Medical College, Gorakhpur, and their Principles, Professors, employees and servants are restrained from taking any steps towards any fresh admission of any medical student to any course or seat

which is not at the time of admission recognized by the Medical Council of India.

It is clarified that if the Medical Council grants recognition the restriction against impressed by our order would automatically be lifted as the restriction order themselves clarify. Case is still pending and final decision is awaited till date.

Letter [3] written by the Director Medical Education, U.P. introduced to Principals of Medical Colleges Kanpur, Agra, Allahabad, Meerut, Jhanshi, Gorakhpur and Registrar, King Gorge Medical University on the subject of 'Recognition of Postgraduate Medical Courses' asking principal's to take appropriate action as per MCI norms to get Postgraduate degree recognized, and to fulfill deficiencies pointed out by the MCI during previous inspections and inform the MCI of action taken in this regard.

The MCI Letter [4] written by the Secretary, MCI introduced to the Secretary (Health), Govt. of U.P. on the same subject mentions that "I am directed to inform you that various postgraduate medical courses are being run in the medical colleges in your State which are yet to be approved / recognized u/s 11 (2) of the IMC Act, 1956. (List enclosed) You are requested to direct the authorities of the medical colleges to approach the Registrar of the University to which the Medical College is affiliated to forward its formal request through the Central Government as required u/s 11 (2) of the IMC Act, 1956 for arranging for the inspection by the Medical Council of India at the time of practical examination of respective PG Courses.

In addition you are requested to direct the college authorities to send compliance regarding the deficiencies pointed out by the Council in respect of the postgraduate courses which have yet not been recommended for recognition for further necessary action in the matter". [4]

Role of MCI, Central Government, State Government, University:

So far as the admissions to unrecognized medical seats are concerned, we have, although prima facie, a very strong view. The Medical Council is the over all supervisor of Medical Education in India. Whether an institution is fit to admit students for the purpose of study ultimately with the aim of receiving medical degrees from that institution, is a matter, which is in the sole decision of Medical Council. If the Medical Council de-recognizes institutions, courses or seats, then and in that event it means that those institutions, those courses or those seats, as the case might be, are not fit for producing qualified doctors of that level or that mentality, specialty. [5]

In such an event, it is the job of every public authority in India to see to it that these deficient institutions do

not admit students or grant them degree which would have inbuilt and hidden incapacity and inadequacy and which would forever in future be of definite danger to the citizen of India at large.

Just as an unqualified man practicing medicine is a threat to public health, so also is a half qualified or badly qualified person is a similar danger to the public. If anything the danger in the second case is more. Thus, a degree from an unrecognized institution, course or seat is a misrepresentation. It is a misrepresentation of a permanent nature which is likely to mislead many and unknowing patient. [5] Most important case came before the Hon'ble Supreme Court on this issue is that of 1999 [6], judgment delivered by a Bench of Hon'ble Chief Justice of India M.M. Punchhi, and his companion Judges K.T. Thomas and D.P. Wadhwa, JJ. (Under Constitution of India, Arts. 226, 254)

Apex Court observed that "It is the Medical Council / Dental Council which can prescribe the number of students to be admitted in medical courses / dental courses in a medical college or institution. It is the Central Government, alone which can direct increase in the number of admissions but only on the recommendation of the Medical Council. Universities and the State Government of Karnataka had no authority to allow increase in the number of admissions in the medical colleges in the State. No medical college can admit any student in excess of its admission capacity fixed by the Medical council subject to any increase thereof as approved by the Central Government and that Sections 10-A, 10-B and 10-C will prevail over Section 53(10) of the State Universities Act and Section 41 (b) of the State Government Capitation Fee Act. To say that the number of students as permitted by the State Government and or University before June 1, 1992 could continue would be allowing an illegality to perpetuate for all time to come". [Par 31, 32] [6]

"It is not that only future admissions will have to be regulated on the basis of capacity fixed by or determined by the Medical Council. Plea of the State Government that power to regulate admission to medical college is prerogative of the State has to be rejected".

It is the Medical Council, which is primarily responsible for fixing standards of medical education and over seeing that these standards are maintained. It is the Medical Council, which is the principal body to lay down conditions for recognition of medical colleges, which would include the fixing of intake for admission to a medical college. The Medical Council Act is reliable to Entry 66 of List 1 of Schedule 7 to Constitution. [6]

Summary and Conclusions:

The problem of non-recognition of degree results in unnecessary litigations in various courts, denial of job to many degree holders, not receipt of call for interview by UPSC, New Delhi, and PGIMER, Chandigarh, mental harassment of candidates, etc.

Over and above when one go into the background of this problem it is very easy to make out that this problem is the result of insensitive authorities on the issue and not fulfillment of Minimum Standard Requirement Criteria fixed by the MCI and directly related to quality of medical education and denial of right to health care (under Article 21 of Indian Constitution) of general public.

Responsibility should be fixed on concerned authorities for not responding in time and raising the problem out of control. No initiative was taken by the faculty members due to reasons best known to them. It might be for the reason of insecurity for themselves or no awareness about the procedure of recognition by the MCI. It might be due to bureaucratic or technocratic insensitivity about the issue.

It is a very important issue of public interest related to violation of **Article 21, 14, 16 of the Indian Constitution** and **other statutory provisions.** This problem of non-recognized degree / diploma awarded by many Indian Universities is also in violation of the Indian Medical Degree Act, 1916, the Indian Medical Council Act, 1956, and it's Regulations, etc.

MCI suo motu may recognize these degree / diploma and apply the 1993 rules afresh while inspecting and

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allowing permission for admission to only new courses without affecting the rights of old candidates.

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