

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
WRIT PETITION (CIVIL) NOS. 12792-97 OF 2006
AND LPA NOS. 1622-29 OF 2006

% Date of Decision : March 5, 2009.

ISHAN KAUL & OTHERS Petitioners in
WP(C) No.12792-97/2006.
ABHISHEK KR. DWIVEDI & OTHERS Appellants in
LPA No.1622-29/2006.
Through Ms. Pinky Anand, Sr. advocate
with Ms.Reava Gujral, advocate.

VERSUS

MEDICAL COUNCIL OF INDIA & ANOTHER Respondents.
Through Mr. Maninder Singh, Mr.T.Singh
Dev, Ms.Neha Sabharwal, advocates for
respondent-Medical Council of India.

CORAM:
HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. This common judgment will dispose of Writ Petition (Civil) Nos. 12792-97/2006 titled *Ishaan Kaul and others versus Medical Council of India and another* and LPA Nos. 1622-29/2006 titled *Abhishek Kr. Dwivedi and others versus Medical Council of India and another*.

2. The common issue involved pertains to interpretation of Indian Medical Council Act, 1956 (hereinafter referred to as Act, for short) and in particular Sections 13(4A) and (4B). The issue also pertains to the scope and power of the Medical Council of India (hereinafter referred to as MCI, for short) in issuing eligibility certificate to a student who wants to study medicine outside India.

3. To control and regulate medical education and practice in modern scientific system of medicine, Parliament has enacted the Act. No person can practice as a Doctor in modern scientific system of medicine without being registered with MCI. Registration is granted by MCI to any person, who has studied and obtained degree in medicine from a recognized medical institution in India which grants degrees/diplomas and licenses in medicine. Sections 10A, 10B, 10C and 11 of the Act deal with permission to establish a medical college, new course of study etc. in medicine in India. They also deal with existing medical colleges and recognition of medical qualification granted by universities or medical institutions in India. The list of medical colleges/institutions in India, which can grant degrees or diplomas, is mentioned in First Schedule to the Act. In the present case, we are concerned with the said Sections and we have not, therefore, referred to said Sections in detail. Section 12 of the Act deals with qualifications granted by medical institutions outside India,

which are included in the Second Schedule. Institutions are included in the Second Schedule by the Central government on the basis of scheme of reciprocity, which is settled after negotiations by the MCI with the authorities of the third country. We are also not concerned with medical institutions/qualifications outside India mentioned in the Second Schedule in the present case. Section 13 of the Act deals with Third Schedule, which has two parts; Part I and Part II. Part I of the Third Schedule deals with medical qualifications granted to a citizen of India before 1st Day of August, 1947 by a medical institution in the territory now forming part of Pakistan and before the 1st Day of April, 1937 by a medical institution in territories now forming part of Burma/Myanmar. We are not concerned with the Part I of the Third Schedule. Medical qualifications granted by medical institutes outside India are included in Part II of the Third Schedule. The distinction between Section 12 and foreign institutions mentioned in the Second Schedule and Section 13 of the Act is noticed in the later part of this judgment.

4. Section 13, sub-sections 3 and 4 of the Act, read as under:-

"3. The medical qualifications granted by medical institutions outside India, before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part IIInd of the Third Schedule shall also be recognised medical

qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

4. The Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India, which is not included in the Second Schedule. Provided that after the commencement of the Indian Medical Council (Amendment) Act, 2001, no such amendment shall be made in Part II of the Third Schedule to include any primary medical qualification granted by any medical institution outside India:

Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary medical qualification granted by any medical institution outside India to any person whose name is entered in the Indian Medical Register.

Explanation- For the purposes of this sub-section, "primary medical qualification" means any minimum qualification sufficient for enrolment on any State Medical Register or for entering the name in the Indian Medical Register."

5. Sub-Section 3 to Section 13 stipulates that a medical qualification granted before the stipulated date by a medical institute outside India mentioned in Part II of the Third Schedule shall be a

recognized qualification for the purpose of the Act but no one will be entitled to practice or be registered under the Act unless he is a citizen of India and has undergone such practical training as may be required by rules and regulations in force in the foreign country or when no such practical training has been undertaken, such practical training as may be prescribed.

6. Section 13(4) stipulates that the Central Government has power to amend Part II of the Third Schedule but no such amendment shall be made after commencement of Indian Medical Council (Amendment) Act, 2001. Thus, after passing of the aforesaid amendment Act, Part II of the Third Schedule stands frozen and cannot be amended to include name of any medical institute outside India granting primary medical qualification, which as per the explanation means the minimum qualification sufficient for enrolment. Freezing of Part II of the third Schedule by the Indian Medical Council (Amendment) Act, 2001 is directly associated and connected with the introduction and enactment of sub-sections 4A and 4B to Section 13 of the Act by the same amending Act.

7. The reasons why Indian Medical Council (Amendment) Act, 2001 was enacted are well known. A large number of Indian students were going abroad to study medicine and obtain a medical degree to

practice as a doctor in India. MCI had themselves sponsored students for under graduate and post graduate studies in medical institutions in abroad during the period 1987-90. However, there were complaints of fall or lack of standards, medical colleges with dubious antecedents and teaching capabilities and how private agencies had sponsored students to study in foreign medical colleges for commercial gains. Government of India had consultations with the MCI and in 1995 advertisements were issued giving a general warning to students taking admissions in some countries. It was noticed that some of the students who were taking admission had not passed 10+2 examination or had secured less than 60% marks in 10+2 examination. Students who had not studied biology in school were admitted in some of the medical colleges. In August, 1997, MCI had issued advertisements in newspapers warning students taking admission in medical colleges/institutes in some countries and had stated that recognition of 29 medical institutions was under review and MCI might not recognize degrees granted by these institutes in case of de-recognition.

8. On 17th September, 1997, Executive Committee of MCI took certain decisions and imposed/fixed eligibility criteria for students returning with degrees from different medical institutions from erstwhile USSR/CIS countries and seeking registration to practice in

India. The decision of the Executive Council was approved by the General Body. This issue was also examined by the Prime Minister's Office, Ministry of External Affairs and the Ministry of Health in consultation with MCI and on 16th November, 1998, decision was taken that a system of pre-screening before admission and post-screening test after degree is obtained should be introduced, rather than opting for de-recognition of medical institutions. This required amendment to the Act. Accordingly, on 12th March, 2001, the Indian Medical Council (Amendment) Act, 2001 was introduced in the Parliament to provide for eligibility requirements and post-degree test as a precondition for registration with MCI. As per the statement of object and reasons, fixing of eligibility requirements to exclude students who did not fulfill the minimum eligibility criteria and post-screening test was required to ensure adequacy of knowledge and skills acquired by citizens of India who obtain medical qualification from universities and medical institutions outside India.

9. On 3rd September, 2001, the amendments were notified and became part of the Act. As a result of the amendment, Sections 13(4A) and (4B) were enacted. These sections read:

“(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical

practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualified the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies that said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register."

10. The amendments introduced statutory basis and requirement that an Indian citizen who has obtained medical qualification from outside India will be granted registration by MCI to practice modern scientific medicine in India provided (a) he had obtained eligibility certificate from MCI that he was eligible to take admission in any foreign country to study medicine and (b) he has cleared the post degree screen test prescribed.

11. Section 33 of the Act relating to power of the MCI to make regulations was amended and consequently sub-section (ma) was introduced. Section 33(ma) reads as under:-

"33. Power to make regulations.- The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provide for—

- (a) x x x x
- (b) x x x x
- (c) x x x x
- (d) x x x x
- (e) x x x x
- (f) x x x x
- (g) x x x x
- (h) x x x x
- (i) x x x x
- (j) x x x x
- (k) x x x x
- (l) x x x x
- (m) x x x x

(ma) the modalities for conducting screening tests under sub-section (4A), and under the proviso to sub-

section (4B), and for issuing eligibility certificate under sub-section (4B) of section 13;]"

12. MCI formulated Screening Test Regulation, 2002 (hereinafter referred to as the Screening Test Regulation, for short) and Eligibility Requirements for taking admissions for Under Graduate Medical Course in a Foreign Medical Institution Regulations, 2002 (hereinafter referred to as Eligibility Regulation, for short), which were published in the Official Gazette. These Regulations became subject matter of challenge before Courts but were upheld by the Supreme Court in ***Sanjeev Gupta and others versus Union of India and others*** reported in (2005) 1 SCC 45. Some other contentions with regard to internship, etc. for the persons who had completed their degrees prior to 15th March, 2001 were earlier considered by the Supreme Court and decided by judgment dated 8th March, 2002 in ***Medical Council of India versus Indian Doctors from Russia Welfare Association and others*** reported in (2002) 3 SCC 696.

13. Relevant portions of the two regulations read as under:-

"Eligibility Requirement for taking Admission in an Under-Graduate Medical Course in a Foreign Medical Institution Regulations, 2002:

1. x x x x x

2. x x x x x

3. An Indian citizen, who has passed the qualifying examination either from India or an

equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution on or after 15th March, 2002 shall approach the Council for issue of an Eligibility Certificate for that purpose.

4. x x x x x

5. The Council shall be free to investigate on its own into the correctness of information furnished by the candidate in his/her application and/or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/she shall stand debarred from appearing in the screening test prescribed in sub-section (4A) of section 13 of the Indian Medical Council Act, 1956 without any notice. The decision of the Council in this regard shall be final.

6. x x x x x

7. x x x x x

8. The Council shall consider the application for Eligibility Certificate and verify the following details as per the Regulations of the Council—

(i) Whether the candidate fulfills the age criterion prescribed by the Council?

(ii) Whether the candidate fulfills the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997, i.e. minimum qualifying marks criteria in Physics, Chemistry, Biology and English, including relaxed criteria in case the candidate belongs to a reserved category?

(iii) If the candidate belongs to SC/ST/OBC, whether he/she has produced a caste certificate from a Competent category?

9. After verification, as required, if the candidate is found to fulfill the eligibility criteria, the Council shall issue an Eligibility Certificate in the prescribed format to the candidate certifying that he/she is eligible to join a medical institution outside India to obtain a primary medical qualification. The certificate shall indicate that on return after obtaining the foreign primary medical qualification, the candidate shall have to undergo a screening test, subject to fulfillment of the conditions prescribed in the Screening Test Regulations, 2002, and that passing this test shall only entitle him to provisional/permanent registration by the Medical Council of India or the State Medical Councils.

10. In case the candidate does not fulfill any of the qualifying criteria, the Council may reject his application for issue of Eligibility Certificate giving the reasons therefore.

11. The issue of a eligibility certificate to a candidate shall not entitle him to any right, whatsoever, other than to take admission in an undergraduate medical course in a foreign medical institute."

" SCREENING TEST REGULATIONS, 2002

1. x x x x
2. x x x x
3. An Indian citizen possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or permanent registration with the Medical Council of India or any State Medical Council on or after 16.03.2002 shall have to qualify a screening test conducted by the

prescribed authority for that purpose as per the provisions of section 13 of the Act.

Provided that a person seeking permanent registration shall not have to qualify the screening test if he/she had already qualified the same before getting his/her provisional registration.

4. Eligibility Criteria

No person shall be allowed to appear in the screening test unless—

- (1) he/she is a citizen of India and possesses any primary medical qualification, either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organisation; or which is confirmed by the Indian Embassy concerned to be a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated.
 - (2) he/she had obtained 'Eligibility Certificate' from the Medical Council of India as per the 'Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations 2002'. This requirement shall not be necessary in respect of Indian citizens who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002.
5. The purpose of conducting the screening test shall be only to determine the eligibility or otherwise of a candidate for his or her registration with the Medical Council of India or any State Medical Council and qualifying the same shall not confer any other right, whatsoever, on a candidate."

14. Eligibility Regulations relate to the eligibility requirements of the candidate i.e. the student who wants to undertake and study Medicine abroad. The said student/candidate is required to fill up the form

prescribed under the Eligibility Regulation and the MCI is free to investigate into the correctness of the information furnished by the candidate and ask for details. Regulation 8 specifies various aspects which MCI is to verify to determine whether the candidate/student is eligible i.e. whether he fulfills the age criteria, eligibility criteria for admission to MBBS course in India including minimum qualifying marks and lastly whether he belongs to Scheduled Caste/Schedule Tribe/Other Backward Classes category. The Eligibility Regulations are not "institute specific" but rather "student/candidate specific". They do not recognize a foreign institute or a college or degree granted by a foreign institute or college. Under the Eligibility Regulation or even under Section 13 (4A) and (4B) the Act, MCI does not have power to decide whether or not to accept or recognize a foreign institution/college degree in Medicine, which is recognized under the laws of the said country. The said power exists under Section 12 of the Act but only for foreign institutions mentioned or to be included in the second schedule or under Sections 13(3) and 13(4) of the Act in respect of foreign institutions mentioned in Part II of the third schedule. Section 13(4A) and (4B) of the Act and the two regulations framed thereunder do not relate to foreign institutions mentioned in the Second schedule but foreign institutions not mentioned and included in the Second Schedule.

15. The Screening Test Regulations provide for examination or a screening test of Indian students possessing primary medical qualification awarded by a medical institute outside India and who are desirous of getting provisional or permanent registration with MCI to practice Medicine in India. The eligibility criteria with regard to the foreign medical college/institution prescribed in Regulation 4 of the Screening Test Regulations is two-fold : firstly, the name of the foreign college/institution should be included in the World Directory of Medical Schools published by the World Health Organisation or secondly, the foreign institute/college should be a recognized institute in the country where the institute is situated and entitles the degree holder to be enrolled as a medical practitioner in the said country. In the second case, the recognition should be confirmed by the Indian Embassy. Sub-clause 2 of Regulation 4 pertains to eligibility requirement certificate issued under the Eligibility Regulations. Reading of Regulation 4 of the Screening Test Regulations along with eligibility Regulations makes it clear that the Eligibility Regulations do not deal with and authorize MCI to go into and decide whether or not to "recognize" the foreign institute where a candidate/student wants to take admission. The Eligibility Regulations are "student/candidate specific" and prescribe the minimum eligibility requirements for a student/candidate who is citizen of India but wants to study Medicine

abroad. The Screening Test Regulations recognize all colleges and institutes included in the World Directory of Medical Schools published by the World Health Organisation or medical colleges or institutes recognized in the foreign countries, where they are located, entitling the degree-holder to enroll and practice as a Medical Practitioner in the said country. MCI under the said Regulations cannot determine and decide whether a degree issued by a foreign institute/college should be recognized or not. All foreign degrees awarded by institutes/colleges mentioned in the World Directory of Medical Schools or recognized in the countries where they are located are accepted. The Screening Test Regulations, however, provide that an Indian citizen possessing a primary medical qualification from a medical institute outside India has to undergo a Screening Test. It is only on clearing the screening test that a person holding a foreign degree in medicine can be registered and enrolled with MCI to practice modern medicine in India. Clearing of Screening Test is the criteria and basis of verifying the competence, skill, knowledge and ability of an Indian citizen who has obtained a degree from a foreign institute.

16. The issue and question involved in the Writ Petition (Civil) No.18600/2005 titled ***Jishalakshmi Embrandiri versus Medical Council of India and others*** and other cases, related to insistence by MCI on adherence with the requirement pertaining to minimum age

of 17 years for a student to embark on medical studies. The writ petitioners in the said case were students of institutes mentioned in Part II of the Third Schedule to the Act. The question, therefore, was limited to insistence of the MCI to adherence with their Rule mandating that a student should have attained age of 17 years before embarking on medical studies. It is in this limited context that the learned single Judge had gone into the question whether prescription of minimum age, minimum percentage of marks, etc was justified. The question of recognition of medical institute/colleges situated abroad was not an issue. Learned counsel for MCI does not dispute the interpretation given to the two Regulations read with Section 13(4A) and (4B). He has also drawn our attention to the original form prescribed under the Eligibility Regulations. He, however, submitted that in the impugned Judgment dated 5th April, 2006, learned single Judge has held that under the Eligibility Regulations, MCI is expected and empowered to issue certificates to students/candidates only when they intend to pursue studies in a foreign university, which has been duly mentioned and recognized in the Act. The relevant observation in the impugned judgment reads as under:

"9. Anxiety over possible stumbling-blocks to the future of students aspiring to practice as Doctors in India after pursuing medical studies in foreign Universities has been assuaged in large measure by the requirement of obtaining an

Eligibility Certificate prior to the commencement of studies abroad post 15.3.2002. The MCI would not be expected and empowered to issue these Certificates only if the applicant has (a) attained the age of seventeen years, (b) has passed 10+2 in the prescribed subjects with the required minimum percentage (50 per cent) and (c) intends to pursue studies in a foreign University which has been duly mentioned and recognized in the IMC Act. I am unable to accept the contention of learned counsel appearing for the Petitioners that the prescription of 17 years had been introduced only in 1997 and is, therefore, not binding on persons who had commenced their studies prior thereto. Learned counsel for the MCI has filed Recommendations adopted by the MCI in February, 1971 onwards, and Regulations from October, 1978 onwards explicitly requiring that a candidate should have completed the age of 17 years at the time of admission or should have completed that age on or before 31st December of the year of his admission." (emphasis supplied).

17. Having examined the said paragraph, we do not agree that the Eligibility Regulations stipulate or provide that MCI is expected and empowered to recognize a foreign university. We do not think, MCI is empowered/authorized to do so under the Eligibility Regulations. There is no such stipulation in the Eligibility Regulations. There is difference between a foreign institution included in Second Schedule as per Section 12 of the Act and other foreign institutions, which are covered by Section 13(4A) and (4B) of the Act. Foreign institute has to be recognized under Section 12 and only thereupon is included in the

Second Schedule. This inclusion is after following the prescribed procedure. However, under Section 13(4A) and (4B) read with Screening Test Regulations, students who have obtained degrees in medicine from colleges and institutes included in the World Director of Medical Schools published by the World Health Organisation or medical colleges or institutes recognized in foreign countries under their laws, are eligible. The two Regulations framed under Section 13(4A) and (4B) of the Act do not grant right and power to MCI to recognize or de-recognise foreign institutions.

18. Learned counsel for MCI admitted that they do not visit foreign institutions/universities and examine their infrastructure and facilities for the purpose of certifying or rejecting recognition under Sections 13(4A) and (4B) of the Act. No such application is filed by the foreign university/institution. The Act also does not stipulate and provide for recognition of foreign universities by MCI under Section 13(4A) and (4B) of the Act. It may be noted that after 2002, foreign universities/colleges mentioned in the third Schedule, Part II have been frozen. No addition or deletion to the said list of recognized foreign institutions/universities can be made by the Central Government. To deal with the changed scenario with large number of Indian citizens studying medicine abroad and there being some doubt about quality and standard of education, the above amendments were

made and Eligibility and Screening Test Regulations have been enacted. As stated above, as per the Screening Test Regulations foreign universities mentioned in the World Directory of Medical Schools published by the World Health Organisation and foreign medical universities/colleges recognized in the parent countries are recognized as universities/institutions where a citizen of India can study and obtain primary medical qualifications. The Eligibility Regulations stipulate the minimum qualification that a student/candidate who is a citizen of India must possess to study in the said Universities/Institutions and the Screening Test Regulations provide for Screening Test which must be passed for seeking enrolment to practice in India.

19. Para 9 in the decision dated 5th April, 2006 was referred to and relied upon before the Andhra Pradesh High Court in the case of ***R. Sharda versus Medical Council of India*** (Writ Petition (Civil) No. 13332/2006) decided on 31st August, 2006 and it was observed as under:

“On a careful reading of the above judgment, it is clear that the context in which the above observations were made was entirely different. In the said case, the Court was not called upon to decide the controversy in the circumstances prevailing post 15-3-2002. At any rate, the expression used in the said judgment was that “**a foreign University which has been duly**

mentioned and recognized in the IMC Act”.

It was nowhere mentioned that the foreign institution should be included in the Schedules to the Act. Obviously, the ratio laid down in the said judgment was misconstrued by the first respondent.”

20. In view of the above reasoning, it is held that a citizen of India is entitled to study and possess any primary medical qualification in any institute mentioned in Regulation 4 of Screening Test Regulations. Such institute/university need not be recognized and authorized by MCI. A candidate must also satisfy the eligibility requirements mentioned in the Eligibility Regulations and obtain an eligibility certificate from MCI before he proceeds abroad to take admission in a foreign university/college for possessing primary medical qualification. Screening Test Regulations have to be complied with. The appeal and the writ petition are accordingly allowed to the extent stated above. No costs.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

MARCH 5, 2009.
P/VKR