

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LETTERS PATENT APPEAL NO. 84/2011

% Reserved on: 1st June, 2011
Date of Decision: 5th July, 2011

MEDICAL COUNCIL OF INDIA Appellant
Through Mr. Amit Kumar, Mr. Ashish Kumar &
Mr. Jawahar Narang, Advocates.

VERSUS

VANDANA BHATNAGAR & ORS. Respondents
Through Mr. Amarjit Sahni, Advocate for
respondent No. 1.
Mr. Yashish Chandra, Advocate for Ms.
Maninder Acharya, Advocate for respondent
No. 2.
Mr. Rajeev Sharma & Mr. Chandan Sharma,
Advocates for respondent No. 3.

LETTERS PATENT APPEAL NO. 85/2011

MEDICAL COUNCIL OF INDIA Appellant
Through Mr. Amit Kumar, Mr. Ashish Kumar &
Mr. Jawahar Narang, Advocates.

VERSUS

DIMPLE CHAUDHARY & ORS. Respondents
Through Mr. Vijay Kumar, Advocate for
respondent No. 1.
Mr. Yashish Chandra, Advocate for Ms.
Maninder Acharya, Advocate for respondent
No. 2.
Mr. Rajeev Sharma & Mr. Chandan Sharma,
Advocates for respondent No. 3.
Mr. B.V. Niren, CGSC for respondent Nos. 7
and 8.

CORAM:

**HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA**

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

SANJIV KHANNA, J.:

These two intra-Court appeals by the Medical Council of India (MCI, for short) are directed against the common order dated 10th December, 2010 allowing Writ Petition (Civil) No. 11797/2009 filed by Dr. Vandana Bhatnagar and Writ Petition (Civil) No. 12790/2009 filed by Dr. Dimpy Chaudhary and three other doctors. The other respondents to these intra-Court appeals are the University of Delhi, Faculty of Medical Sciences and St. Stephen's Hospital. The facts stated below would exposit that there is an inter se dispute between MCI and the University of Delhi and the respondent doctors were compelled to file the writ petitions to get justice.

2. The respondent doctors are MBBS. They appeared for Delhi Post Graduate Entrance Examination conducted by the University of Delhi and in view of the ranking secured were called for counselling and were allotted/admitted to Diploma in Gynecology and Obstetrics (DGO, for short) in St. Stephen's

Hospital, Delhi. Dr. Vandana Bhatnager was allotted the said course in 1998, whereas Dr. Dimple Choudhary and Dr. Dipti Dugra were allotted the said course in the year 2007. Dr. Anjali Jain had cleared/completed the course in 2008. Dr. Deepanvita Halder was pursuing the course after selection when the writ petition was filed.

3. The contention raised by the appellant-MCI is that the aforesaid course is not recognized by them and, therefore, even if the respondent doctors have cleared the DGO course, the same cannot be added and included in the professional qualifications registered with them. The appellant has relied upon Section 11 and Section 10-A, 10-B and 10-C of the Indian Medical Council Act, 1956 (Act, for short).

4. As the aforesaid Sections are required to be examined, they are being reproduced below:

“10-A. Permission for establishment of new medical college, new course of study, etc.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force,—

(a) no person shall establish a medical college;
or

(b) no medical college shall—

(i) open a new or higher course of study or training (including a post-graduate course of

study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

- (ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.—For the purposes of this section, “person” includes any University or a trust but does not include the Central Government.

Explanation 2.—For the purposes of this section, “admission capacity”, in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2)(a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical

10-B. Non-recognition of medical qualifications in certain cases.—(1)

Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of Section 10-A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation.—For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.]

1 *Inserted by Act 31 of 1993, Section 2 (w.r.e.f. 27-8-1992).*

10-C. Time for seeking permission for certain existing medical colleges, etc.—

(1) If, after the 1st day of June, 1992 and on and before the commencement of the Indian Medical Council (Amendment) Act, 1993 any person has established a medical college or any medical college has opened a new or higher course of study or training or increase the admission capacity, such person or medical college, as the case may be, shall seek, within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1993, the permission of the Central Government in accordance with the provisions of Section 10-A.

(2) If any person or medical college, as the case may be, fails to seek the permission under sub-section (1), the provisions of Section 10-B shall apply, so far as may be, as if, permission of the Central Government under Section 10-A has been refused.]

1 *Inserted by Act 31 of 1993, Section 2 (w.r.e.f. 27-8-1992).*

11. Recognition of medical qualifications granted by Universities or medical institutions in India.—(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official

Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.”

5. It may be noted here that Section 10-A, 10-B and 10-C were inserted and became part of the statute pursuant to the amendment made by Act of 31 of 1993 with effect from 27th August, 1992. After enactment of Sections 10-A, 10-B and 10-C in the Act, the MCI has formulated Post Graduate Medical Education Regulations, 2000 with retrospective effect from 27th August, 1992.

6. The Act was enforced with effect from 30th December, 1956. Section 11 is a part of the enactment since the beginning and consists of two sub-sections. Sub-section 1 stipulates that medical qualifications granted by a university or medical institutions in India and included in the First Schedule to the Act shall be recognized medical qualifications. The First Schedule includes names of universities or medical institutions in India, who were/are recognized to award medical qualifications or degrees on the date the Act was enacted or subsequently. Thus,

universities/institutions and the medical qualifications mentioned therein qualify as recognized medical institutions. Sub-section 2 to Section 11 applies when a university or medical institution in India wants to grant or seeks recognition of a medical qualification, which is not included in the First Schedule and wants an amendment or inclusion in the First Schedule. Sub-section 2 will not apply in case, where a medical qualification to be issued by a university or institution is already included in the First Schedule.

7. The admitted position in the present case is that the University of Delhi is one of the universities mentioned in the First Schedule. The First Schedule stipulates that the University of Delhi is entitled to issue degree/diploma at post graduate level. It is not disputed that DGO course is a Post Graduate Level Diploma/Degree and mentioned in the First Schedule. The relevant portion of the First Schedule to the Act reads as under:

"University of Medical Institution"	Recognised medical qualification	Abbreviation for registration
University of Delhi	Bachelor of Medicine and Bachelor of Surgery	M.B.B.S. (Delhi)
	[Diploma in Tuberculosis Diseases	D.T.D. (Delhi)
	(b) Master of Science (Anatomy)	M.Sc. (Anatomy), Delhi.
	Doctor of Medicine (Medicine)	M.D. (Med.), Delhi

Master of Surgery (Medicine)	M.S. (General Surgery), Delhi.
<u>Doctor of Medicine (Obstetrics and Gynaecology)</u>	<u>M.D. (Obst. And Gyn.), Delhi</u>
[Diploma in Tuberculosis and Chest Diseases.	D.T.C.D., Delhi
[Diploma in Ophthalmology.	D.O., Delhi
Diploma in Anaesthesia	D.A., Delhi]
[Diploma in Gynaecology and Obstetrics	D.G.O., Delhi
Master of Science (Medical Bio-chemistry)	MS.C. (Med. Bio-Chem.), Delhi
[Doctor of Medicine (Medical Bio-chemistry)	M.D. (Medical Bio-chemistry), Delhi]
Master of Science (Pharmacology)	M.Sc.(Pharm.), Delhi
Diploma in Child Health	D.C.H., Delhi]
[Master of Science (Medical Bacteriology)	M.Sc. (Med.Bact.), Delhi
Doctor of Medicine (Medicine Micro-biology)	M.D. (Med. Micro), Delhi.]
[Doctor of Medicine (Paediatrics)	M.D. (Paed.), Delhi
Doctor of Medicine (Social and Preventing Medicine)	M.D. (Soc. And Prev. Med.), Delhi
Master of Surgery (Ophthalmology)	M.S. (Ophth.), Delhi
Master of Medicine (Anaesthesiology)	M.D. (Anaes.), Delhi]
[Master of Surgery (Anatomy)	MS. (Ana), Delhi
Doctor of Medicine (Pathology)..	M.D. (Path.), Delhi
Diploma in Medical Radiology – Diagnosis	D.M.R.D., Delhi
Diploma in Medical Radiology – Therapy	D.M.R.T. , Delhi
Diploma in Radiation Medicine	D.R.M, Delhi
Master of Surgery (Plastic Surgery)	M.Ch. (Plastic Surgery), Delhi]
[Doctor of Medicine (Pharmacology)	M.D. (Pharm.), Delhi
Doctor of Medicine (Cardiology)	M.D. (Cardiology), Delhi
[Doctor of Medicine (Community Health Administration)	M.D. (community Health Administration)
[Doctor of Medicine (Dermatology including Leprosy and Venereal Diseases)	M.D. (Derm. Including Leprosy and Ven. Diseases)
Diploma in Venereology and Dermatology	D.V.D.
[Diploma in Otology and Laryngology	D.L.O.
	This qualification shall be a recognised medical qualification when

	granted on or before 30 th April, 1979]
[Doctor of Medicine (Physiology)	M.D. (Phy.)
Diploma in Health Education	D.H.E.
when held by medical graduates only].	
[Doctor of Medicine (Tuberculosis and Resp. Diseases)	M.D. (Tuberculosis and Resp. Diseases)
[Diploma in Dermatology]	D.D.]
[Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine)

Note:- The above qualification shall be recognised medical qualification when granted by University of Delhi in respect of the students being trained at Maulana Azad Medical College, New Delhi and Lady Harding Medical College, New Delhi.

[b] Inserted by S.O. 2095, Gaz. Of Ind., 1961, Pt. II, S. 3 (ii), p. 2501."

(emphasis supplied)

8. DGO awarded by the University of Delhi was recognized and included in the First Schedule of the Act by a notification in 1961. The University of Delhi in their counter affidavit has stated that they had introduced DGO course in St. Stephen's Hospital in the year 1976 and since then every year students have been admitted to the said course without any objection from MCI. The learned single Judge during the course of proceedings had asked MCI to produce the original record by which recognition was granted to the Delhi University. The original record was not produced and it was stated by MCI that the same was not traceable. Original record has not been produced before us. The learned single Judge has rightly noticed that in the First

Schedule to the Act, DGO course of the Delhi University is included and mentioned as recognized medical qualification or course which can be conducted by the said University. Delhi University from the very beginning does not conduct any medical course themselves but the courses are conducted and taught in affiliated colleges or medical institutions. A reading of the First Schedule, therefore, authorises and mandates that the University of Delhi is entitled to conduct DGO courses and award degrees through their affiliated colleges/medical institutions. There is no restriction that the DGO course must be conducted in a particular/specified affiliated college/institution or any prior approval or permission is required from MCI. Delhi University is entitled to conduct another course, Doctor of Medicine (Forensic Medicine). However, in respect of the said course, it is stipulated that the course must be conducted in Maulana Azad Medical College, New Delhi or Lady Harding Medical College, New Delhi and no other college/medical institution. Thus, the First Schedule makes a distinction between DGO course of the Delhi University and Doctor of Medicine (Forensic Medicine), which can be conducted by the Delhi University but only in two medical colleges mentioned

therein. The learned single Judge in paragraphs 3 and 4 of the impugned order dated 10th December, 2010 has recorded as under:

“3. To remove any doubt as to whether the note under the Doctor of Medicine (Forensic Medicine), relates to the said qualification only or to all the qualifications mentioned above the note, the counsel for the respondent No. 3 St. Stephen’s Hospital has been requested to check up in the earlier edition of AIR Manual of the year prior to the introduction in the Schedule of the Course of doctorate in Forensic Medicine Course. The counsel has produced the AIR Manual, Volume 25, 4th Edition in which in the Schedule aforesaid neither the course of Doctorate in Forensic Medicine appears (which was introduced in 1988) nor the note aforesaid appears.

4. From the aforesaid, it is quite clear that the recognition granted to the DGO course by the University of Delhi was without any such restriction as to the Institute/College/Centre from which the same is to be done.”

9. Learned counsel for the appellant-MCI has relied upon ***Rajasthan Pradesh V.S. Sardar Shahar and Another versus UOI & ORS***, 2010 (6) SCALE 107. The said decision makes a distinction between the term “recognition” and “affiliation” for the purposes of Indian Medical Central Council Act, 1970. The aforesaid distinction was drawn in a different context and it was

observed that “recognition” means that the school has been recognised or acknowledged by the appropriate authority under a particular statute and “affiliation” means that students of an institute are eligible to appear in an examination. As far as Section 11(1) is concerned, the said distinction is not relevant. Section 11(1) uses the term “recognition” and stipulates that the university or medical institutions, which are included in the First Schedule shall be recognised medical qualifications for the purposes of the Act. Thus, for the purpose of Section 11(1) once the university/institution is included in the First Schedule, consequences envisaged under Section 11(1) flow. Thus in 1961 after following the procedure prescribed in Section 11(2) the University of Delhi became entitled to award DGO after it was included in the First Schedule. There was no restriction or requirement of affiliation of a particular college or institution prescribed. Such prescribed restriction is to be found in respect of degree of Doctor of Medicine (Forensic Science).

10. As noticed above, Sections 10-A, B and C were introduced with effect from 27th August, 1992. DGO course was introduced in the University of Delhi with effect from 1961 and in the St. Stephen’s College with effect from 1976. At that time, Sections

10-A, B and C of the Act were not enacted as a part of the statute. The said provisions, therefore, are not attracted to the DGO course started by University of Delhi in St. Stephen's College in 1976. In view of Section 10-A, if the Delhi University wants to establish a medical college or open a new or higher course of study or training or even increase the admission capacity in any course or training, they will have to follow the procedure prescribed under Section 10-A of the Act. However, the said provision will not be applicable to the existing courses which were already started by the Delhi University and included in the First Schedule, in case there is no increase in the number of students. Courses which are already in existence and included in the First Schedule of the Act do not require registration under Section 10-A, unless there is increase in the admission capacity. The said provisions and, therefore, the Regulations of 2000 are inapplicable and cannot be invoked by the MCI.

11. Section 10-A has a non-obstante provision and applies notwithstanding anything contained in the Act or any other law for the time being in force. The non-obstante clause has to be given full play and meaning but not beyond what is stipulated in 10-A(1)(a) and (b). Section 10-A does not require any existing

university/medical institution which is already included in the First Schedule to apply once again, even if the conditions stipulated in Section 10-A(1) are not attracted. Only when sub-clauses (a) and (b) to Section 10-A(1) apply that the provision is applicable and attracted. As noticed above, sub-clauses (a) and (b) to Section 10-A(1) are not applicable to the facts of the present case. Section 10-B has to be read along with Section 10-A. It provides for consequences where Section 10-A applies and a medical college has not been established without previous permission of the Central Government and in accordance with the provisions of Section 10-A. Section 10-B also applies if a new or higher course is started without permission of the Central Government in accordance with Section 10-A or when there is an increase in admission capacity except with previous permission of the Central Government in accordance with Section 10-A. In the last category, medical qualification granted to a medical student on the basis of increase in capacity is not recognised. Section 10-B cannot be applied and is not attracted when Section 10-A is not applicable. Section 10-C is a transient provision and is applicable where a university/medical institution was set up on or after 1st day of June, 1992 but before

the commencement of Indian Medical Council (Amendment) Act, 1993, which was made applicable with effect from 27th August, 1992. It also applies when a new/higher course is introduced or when there is an increase in intake after 1st June, 1993. None of the provisions 10-A, B and C stipulate that they will also apply to recognised institutions mentioned in the First Schedule if provisions of Section 10-A of the Act are not applicable. Section 10-C gives limited retrospective effect to Section 10-A for institutions, which had come up on or after 1st day of June, 1992 and in cases where a new or higher course of study or training or increase in admission capacity is made on or after 1st day of June, 1992.

12. In view of the aforesaid discussion, the appeals have to be dismissed. These are accordingly dismissed but there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DIPAK MISRA)
CHIEF JUSTICE

JULY 05, 2011
VKR