THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.09.2013

+ **W.P.(C) 1655/2013**

ROHIT NARESH AGARWAL ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

+ **W.P.(C) 2042/2013**

DASARI YASHWANT CHANDRA ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

+ **W.P.(C) 1660/2013**

SANJAY PATIDAR ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

+ **W.P.(C) 2038/2013**

MEHBUB ALAM MAZUMDAR ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

+ **W.P.(C) 2041/2013 & CM No. 5172/2013**

JOB JOHAN DASARI ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 2043/2013**

AMARLAPUDI RAMESH ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR …... Respondents

AND

\+ **W.P.(C) 2045/2013**

KARTHIK BATHINI ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 1661/2013**

KALE AVINASH BALASAHEB ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

\+ **W.P.(C) 2746/2013 & CM No. 5178/2013**

VIGNESH PATIDAR ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 2838/2013 & CM No. 5354/2013**

MADHAV KATAKWAR ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 1981/2013 & CM No. 10915/2013**

ABISHEK PRAMOD RAICHURKAR ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

\+ **W.P.(C) 2025/2013**

DIGAMBAR BALASAHEB PAWAR ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

\+ **W.P.(C) 2040/2013**

NAMRATA ANAND ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 2044/2013**

MD. NAVEED AHAMED ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

+ **W.P.(C) 1688/2013**

NEHA SINGH ..... Petitioner

versus

NATIONAL BOARD OF EDUCATION & ANR ..... Respondents

AND

+ **W.P.(C) 2895/2013 & CM No. 5445/2013**

SWAPNIL JAIN ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

+ **W.P.(C) 1657/2013 & CM No. 10817/2013**

PARTH PRAKASHBHAI JOSHI ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

+ **W.P.(C) 2026/2013**

MAYANK SINGH ..... Petitioner

versus

UNION OF INDIA AND ORS ..... Respondents

AND

+ **W.P.(C) 2039/2013**

KARVANGA SAMPATHGOUD ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ….. Respondents

AND

+ **W.P.(C) 4240/2013 & CM No. 9877/2013**

KOKNI DHAVALKUMAR PARSOTTAMBHAI ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ….. Respondents

AND

+ **W.P.(C) 4241/2013 & CM No. 9878/2013**

NITIN MISHRA ..... Petitioner

versus

NATINAL BOARD OF EXAMINATIN & ANR ….. Respondents

AND

+ **W.P.(C) 4478/2013 & CM No. 10345/2013**

RUMCHINMIN SHOUTE ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ….. Respondents

AND

+ **W.P.(C) 4780/2013 & CM No. 10879/2013**

VALAY HITENDRABHAI PATEL ..... Petitioner

versus

UNION OF INDIA & ORS ..... Respondents

AND

+ **W.P.(C) 5356/2013**

SANJEET SINGH TANWAR ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 5727/2013**

VAIBHAV SEN ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

AND

\+ **W.P.(C) 5728/2013**

KESAMREDDY YUGANDHAR ..... Petitioner

versus

NATIONAL BOARD OF EXAMINATION & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr M.Y. Deshmukh with
Mr Yatin M. Jagtap.
Mr D.K. Devesh with
Mr Abhinav Ramakrishnan,
Ms Nutan Kumari.
Mr Ajit K. Singh with
Mr Kumar Sameer.

For the Respondents : Dr Rakesh Gosain for NBE.
Mr Saqib in W.P.(C) 4780/2013.
Mr Amit Kumar for MCI.
Mr B.V. Niren, CGSC for UOI.
Mr Jatan Singh in W.P.(C) Nos. 2025/2013, 2026/2013.
Ms Sweety Manchanda in W.P.(C) No. 1981/2013.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These are writ petitions filed by the petitioners challenging clause 4(3) of the Screening Test Regulations, 2002 as introduced by "the Screening Test Regulations (Amendment), 2010, issued and notified on 16.04.2010 by the Medical Council of India. As all the writ petitions involve a similar challenge to clause 4(3) of the Screening Test Regulations, 2002 (hereinafter referred as the 'impugned regulation'), the same have been taken up together. In order to consider the controversy involved in the present writ petitions, the relevant facts stated in W.P.(C) 1655/2013 are being referred herein.

2. The petitioner in W.P.(C) 1655/2013 (hereinafter referred to as the petitioner) cleared his Higher Secondary Certificate Examination on 05.06.2006 from the Maharashtra State Board of Secondary and Higher Secondary Education, Pune. Thereafter, the petitioner was admitted in Smolensk State Medical University, Smolensk, Russia, in the first year of a six year medical course equivalent to the MBBS Course in India. The petitioner successfully completed the first four years of the course from the said University during the academic years 2006-07 to 2009-2010. Thereafter, on account of certain reasons, which are described as compelling situations, the petitioner left Smolensk State Medical University and took a transfer to Osh State University in Kyrgyz Republic during the academic year 2010-11. The petitioner, thereafter, completed the balance two years of the course from the Osh State University and graduated from the said University in June 2012 with a degree of Doctor of Medicine in

General Medicine. The petitioner has produced a Diploma awarding the qualification of "Doctor of Medicine (MD) in the Profession of 'General Medicine'". A Certificate dated 13.06.2012 has also been issued by Osh State University certifying the petitioner to have completed the six years course and further certifying that the petitioner has been awarded the qualification of Doctor of Medicine in the profession of "General Medicine". A no objection certificate has also been issued by the said University stating their no objection to the petitioner carrying on further study and research work or performing any activity according to the Diploma awarded to him.

3. It is relevant to note that the petitioner had applied for an eligibility certificate for undertaking an undergraduate medical course outside India and in terms of "the Eligibility Requirement for taking Admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002," (hereinafter referred to as the "Eligibility Regulations"), an eligibility certificate was issued to the petitioner stating that he was eligible to apply for admission in a foreign medical institution. The relevant extract of the said certificate is quoted below:-

> "(In terms of "the Eligibility Requirement for taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002," framed under section 13(4B) of the Indian Medical Council Act, 1956)
>
> This is to certify that as per the particulars/documents and the declaration submitted by candidate **Mr./Ms. AGARWAL ROHIT NARESH S/o/D/o. NARESH NATHURAM AGARWAL** he/she is eligible to apply for admission in a foreign medical institution for pursuing/graduate medical

course leading to "Primary Medical Qualification" (as per Eligibility Requirement for taking Admission in Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002) equivalent to MBBS in India in Medical institution abroad (as per Screening Test Regulations, 2002). This certificate is subject to the following conditions (i) his/her fulfilling the eligibility criteria (as per MCI Regulation on Graduate Medical Education, 1997 & Screening Test Regulations, 2002) (ii) fulfilling other conditions prescribed by such foreign medical institute and the university with which such institution is affiliated (iii) his/her possessing valid passport with other travel documents and (iv) Final Orders passed by Hon'ble Delhi High Court in LPA No. 1622-29 of 2006 – Abhishek Kumar Dwivedi & Ors. Vs. MCI."

4. On completion of the medical course from Osh State University (Kyrgyz Republic), the petitioner returned to India and applied for the FMGE Screening Test which was scheduled to be conducted on 30.09.2012. The petitioner was issued an admit card to appear for the screening test to be conducted by the National Board of Examination (respondent no. 3 herein). The petitioner took the screening test, however, the result of the petitioner was withheld as the petitioner was ineligible for taking the said examination on account of his not having completed the entire undergraduate medical course from one university. The petitioner had migrated to Osh State University from Smolensk for completion of his last two years undergraduate medical course and, thus, in terms of the impugned regulation, the petitioner was ineligible to take the Screening Test held in terms of the Screening Test Regulations, 2002.

5. Interim orders were passed by this Court whereby the results of the screening test were declared and petitioner and other similarly placed students were also permitted to appear for further screening test being conducted by respondent no. 3. However, it was clarified that the results would be subject to the outcome of the present petitions.

6. The controversy in the present petitions relates to the amendment to the Screening Test Regulations, 2002 as amended by "the Screening Test Regulations (Amendment)", 2010 notified on 16.04.2010, whereby the impugned regulation (Clause 3 of regulation 4 of the Screening Test Regulations, 2002) has been introduced. By virtue of the impugned regulation, it is mandatory for a student to complete his medical course from the same institute located abroad in order to be eligible to appear for the Screening Test referred to in section 13(4A) of the Indian Medical Council Act, 1956. The petitioner having completed his undergraduate medical course from two universities would be ineligible for taking the screening test and, consequently, would be ineligible to have his name entered in the Indian medical register or the medical register maintained by a State Medical Council (hereinafter referred to as 'Medical Registers') and practice the profession of medicine in India. All the petitioners are similarly placed and are aggrieved by the introduction of the impugned regulation and have thus preferred the present writ petitions.

7. It is contended on behalf of the petitioners that the impugned regulation has been introduced w.e.f. 16.04.2010 and, thus, cannot be given any retrospective effect. The petitioners had commenced their undergraduate medical course from foreign institutions prior to 16.04.2010

and consequently, applying the impugned regulation in their cases would amount to implementing the impugned regulation with retrospective effect. It is further contended that the eligibility certificate issued to the petitioners also did not have any condition which restricted their migration from one institution to another for completing their undergraduate medical course. In the aforesaid circumstances, introducing an additional restriction in respect of the petitioners who had proceeded overseas prior to 16.04.2010 and acted on the basis of the un-amended Screening Test Regulations, 2002 would be arbitrary and unreasonable.

8. It is further contended on behalf of the petitioners that the amendment to the Screening Test Regulations, 2002 is *ultravires* the Indian Medical Council Act, 1956 (hereinafter referred to as the 'Act'). Section 13(4B) of the Act provides that citizens of India who have obtained medical qualifications from any medical institution outside the country which enables them to enroll as a medical practitioner in that country would not be entitled to be enrolled in the Medical Registers unless they qualify the screening test. It is contended that as the criteria for appearing in the screening test was expressly provided in Section 13(4B) of the Act, the same could not be further restricted by the regulations.

9. It is further contended that the amendment to the Screening Test Regulations, 2002 would also be in excess of the powers conferred on the Medical Council of India (hereinafter referred to as the 'MCI'). Section 33 of the Act empowered the MCI to make regulations. However, in regard to the Screening Test to be conducted as per Section 13(4A) of the Act, this power to make regulations was restricted to only make regulations in

respect of the modalities for conducting screening test and for issuing eligibility certificate and, thus, prescribing an eligibility criteria for undertaking the screening test was beyond the regulation making power conferred upon the MCI.

10. The learned counsel appearing for the MCI (respondent no. 2) submitted that import of impugned regulation is that it would be impermissible for any person to shift colleges after 16.04.2010. It is further submitted that the purpose of the impugned regulation is to restrict candidates from shifting colleges in order to ensure that the integrity of the course undertaken by a student is maintained. Different universities are likely to have structured their course curriculum differently and migration of students from one institution to another was likely to undermine the standard of education. It is urged on behalf of the MCI that the impugned regulation was introduced to ensure better standards for medical practitioners in India. In response to the contentions raised by the petitioner that the impugned regulation was beyond the power delegated to the MCI, it was submitted on behalf of the MCI that Section 33 of the Act empowers MCI to frame regulations to carry out the purpose of the Act and the power to make regulations with respect to the Screening Tests referred to in section 13(4A) of the Act cannot be restricted to merely providing modalities for conducting screening test but would also extend further for the general purpose of the Act. It was, thus, contended that power to make regulations would include power to make regulations for ensuring that standards for being enrolled as medical practitioners in India are maintained. The learned counsel appearing for the MCI has also drawn our

attention to the decision of the Supreme Court in ***Union of India & Anr. v. Azadi Bachao Andolan & Anr.*****: (2004) 10 SCC 1** in support of his contention that the validity of a delegated legislation ought to be tested with reference to the purpose of the principal statute.

11. The learned counsel appearing for the MCI has relied upon the decision of the Supreme Court in ***Medical Council of India v. J. Saai Prasanna & Ors.*****: (2011) 11 SCC 748** and has drawn our attention to paragraph 14 of the said judgment, wherein the Supreme Court had referred to the impugned regulation and had held that the same would allay any apprehension that unscrupulous operators would conduct courses in unauthorized institutions in India and make the students take their final exams in a foreign country to secure a degree outside India. It is contended on behalf of the MCI that in view of the observation made by the Supreme Court, the validity of the impugned regulation cannot be challenged.

12. We have heard the learned counsel for the parties.

13. The challenge to the impugned regulation raised in the present petitions must be considered in the background of facts leading to the amendment of section 13 of the Act in 2001 and framing of the Screening Test Regulations, 2002.

14. In the year 1981, the Government of India had requested MCI to consider grant of recognition to medical courses being conducted by medical institutions in the erstwhile States of USSR. The medical courses in USSR were of six years and included one year of language training. The students were also required to undertake an internship of one year which

was similar to the requirement in India. The Government of India granted recognition for certain undergraduate medical courses being conducted by specified institutions located in the erstwhile USSR and the same were included in the second schedule to the Act. After the disintegration of USSR, reports were received from Indian Embassies in Moscow and Almaty in 1994 that various private agencies were sponsoring medical students from India to undertake courses in the erstwhile States of USSR and CIS countries for commercial benefit. The antecedents of these private agencies were highly questionable. Government of India sought the views of the MCI in respect of the above mentioned reports received from the Indian Embassies. On 01.11.1994, the MCI communicated its recommendations to derecognize all medical degrees from institutions located in the erstwhile USSR. In view of the reports received by the Government of India, the recognition granted to medical degrees from certain institutions which were included in the second schedule to the Act were sought to be reviewed. In March 1995, the Government of India issued advertisements in newspapers informing the public that the Government of India had not authorized any private agency to sponsor students for admission in medical institutions and all students seeking admission through any private agency in institutions situated in Russia and other CIS countries would do so at their own risk.

15. Subsequently, further reports were received that there was a perceptible decline in the academic standards of the Russian Medical Institutions who had continued to admit Indian students sponsored by private agencies. The MCI also found that many students from India were

being admitted to undergraduate courses, in countries which formed a part of the erstwhile USSR, who would otherwise not be eligible for securing admission in medical degree courses on account of having secured less than 50% marks in the Higher Secondary Examination or on account of not having Biology as a subject at the 10+2 level. In addition, there were certain students who had completed the initial course in unrecognized institutions and had migrated to recognized institutes for completing the later part of their medical course. Some students had obtained medical degrees by undergoing a course of less than six years.

16. In view of the above, the MCI issued advertisements in 1997 in various newspapers warning students from taking admission in institutions in countries which were earlier a part of USSR. The students were warned that recognition of degrees from institutions in erstwhile USSR were under a review and the students would not be eligible to practice Medicine in India.

17. In view of the information gathered by the MCI, the Executive Committee of the MCI took certain decisions on 17.09.1997 which included not permitting the name of students, who had completed a medical degree course of less than six years duration, to be entered in the Medical Registers as medical practitioners in India. Further, one year Internship post qualification was made mandatory. It was further decided that those students who were ineligible for admission to an undergraduate medical course would not be enrolled in the Medical Registers. Similarly, students who had initially taken admission in an unrecognized institution and had

subsequently migrated to recognized institutions in erstwhile USSR would also not be eligible to practice in India.

18. A meeting was held on 06.11.1998 which was presided over by the Principal Secretary to the Prime Minister of India and attended by the Secretary, Ministry of Health, Foreign Secretary and Senior Officials from various Ministries as well as the MCI. At the said meeting the following decisions were taken:-

> "1. There will be no change in the status of the two institutions namely Daghestan State Medical Institute, Russia and Azerbaijan Medical Institute in Azerbaijan which were already derecognised in March 1998.
>
> 2. Instead of going in for de-recognition of the other medical institutions in the erstwhile USSR, a system of post-screening of the students who are coming back to India after obtaining the degree from these institutions can be introduced *straightway*. This can be made applicable to all the students who return to India after obtaining medical degrees from any foreign medical institution.
>
> 3. A system of pre-screening of the students desirous of taking admission in the medical institutions in these countries shall also be worked out by MCI. This can be introduced from the forthcoming academic year.
>
> 4. The MCI and the Department of Health will work out technical details for introducing the pre-screening and post-screening processes suggested above."

19. In view of the questions raised, with regard to the medical qualification of students who had undertaken courses in the States of erstwhile USSR and the MCI declining to register certain students from those countries, several writ petitions came to be filed in different High

Courts by students who had undertaken a medical course in institutions in erstwhile USSR. This High Court allowed certain writ petitions which were also confirmed in appeal, by a Division Bench of this Court. Certain interim orders were also granted by the Allahabad High Court which were also confirmed. The MCI filed appeals against such orders in the Supreme Court of India. The Supreme Court heard all the appeals together (***Medical Council of India v. Indian Doctors from Russia Welfare Association***: **Civil Appeal No.2779/2000 and other matters**). During the course of the hearing before the Supreme Court, various suggestions were made by the court and the then learned Solicitor General of India, who was appearing for the MCI was requested to take instructions with regard to evolving an equitable solution to the problem being faced by students who had completed their courses from the countries of erstwhile USSR. Pursuant to the observations made by the Supreme Court, a meeting of the General Body of the MCI was held on 31.03.2000 wherein with a view to mitigate the hardship being faced by the students who had completed their medical course in erstwhile USSR, a scheme was formulated for the consideration of the Supreme Court. The relevant extract from the minutes of the meeting of the MCI held on 31.03.2000 is reproduced as under:

> "The Executive Committee in order to remedy the various problems which have arisen on account of the break-up of Soviet Union, *as a one-time measure* decided to place the following possible solutions for consideration by the Hon'ble Supreme Court:
>
> (i) In the view of the Medical Council any student who has obtained less than 50% marks in Physics, Chemistry & Biology in the 10+2 examination would not at all be

eligible for registration. This in the considered view of the Council is an absolute imperative in the larger interest of public health.

(ii) MCI recognised institutions which impart 6 years of medical education with one year of internship. Therefore, degrees issued by such recognised institutions to students who have put in 6 years of medical education and have successfully completed the course and obtained the degree and thereafter have completed one year of internship (both in recognised institutions) would be recognised by MCI and will be considered eligible for provisional/permanent registration as the case may be.

(iii) In relation to students who have completed 6 years of medical education, out of which initial period of not more than 4 months was in an unrecognised institution, and the rest in a recognised institution the MCI will accept their request for registration upon their completing 16 months of internship.

(iv) The students who have completed 6 years of medical education but have studied more than 4 months but not more than 6 months in an unrecognised institution (and the rest in a recognised institution) should be required to undergo an additional internship of 12 months over and above the usual internship of 12 months i.e. total internship of 24 months.

(v) Students who have studied 5-1/2 years of medical education (although in a recognised institution) would appear in an examination and upon being successful (in not more than three attempts) will be required to undergo regular 12 months of internship after which they would be considered for registration.

(vi) In all other cases, where the candidate is otherwise qualified i.e. he has obtained more than 50% marks in Physics, Chemistry and Biology in the 10+2 examination but has put in less than 5-1/2 years in a recognised

institution (whether on account of a compressed course or on account of putting in more than 6 months in an unrecognised institution), the candidate may be required to surrender his degree to his recognised institution, complete the deficient period so as to have completed 6 years of medical education in the same recognised institution and thereafter obtain a fresh degree from the said recognised institution. It may be clarified that this deficient period can be covered only by going back to the same institution from where he has earlier obtained the degree which has now been surrendered.

(vii) The screening test required to be undergone by the candidates will be the same as conducted by the All India Institute of Medical Sciences, New Delhi for the candidates desirous of admission in the postgraduate courses in the institute. The Council was of the view that this test would be most appropriate to test the provisional knowledge of medical graduates of institution in Russian Federation & other CIS countries."

The above resolution passed by the MCI was accepted by the Supreme Court and an interim order dated 17.04.2000 was passed accordingly.

20. In order to give effect to the decisions taken during the course of proceedings before the Supreme Court of India and to effectively address the issues at hand, changes in the legislative framework were necessary and accordingly necessary steps were taken to amend Section 13 of the Act and the Indian Medical Council (Amendment) Act, 2001 was enacted. By virtue of the said enactment, section 13 of the Act was amended to include sub-sections (4A) & (4B).

21. Subsequently, the MCI also submitted "the Screening Test Regulations, 2002" and "the Eligibility requirement for taking admission

for an Undergraduate Medical Course in Institutions Abroad Regulations, 2002" to the Central Government. These Regulations were approved by the Central Government and came into effect from 15.03.2002. The Supreme Court approved the guidelines formulated by the MCI, with respect to persons who had completed their medical degree course prior to 15.03.2001, in exercise of powers under Article 142 of the Constitution of India in ***Medical Council of India v. Indian Doctors from Russia Welfare Association***: (**2002) 3 SCC 696**. The Supreme Court also noted that the legislative amendments to the Act would cover the situations before the court in that case.

22. To briefly summarize, the problems that arose after disintegration of USSR and which were the subject matter of the appeals before the Supreme Court in ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra)* are as under:

(a) Students, who were otherwise ineligible for admissions in medical colleges on account of them securing less than 50% aggregate marks in their Higher Secondary Examination (i.e10+2) or did not have Biology as a subject in their course curriculum of Higher Secondary Education (i.e at 10+2 level), had proceeded outside India and taken admissions in Institutions outside India.

(b) Students had obtained their medical qualification degrees by undergoing a course outside India which was less than 6 years.

(c) Students had completed their initial medical course in unrecognized institutions in India and had completed the later part of their course from institutions overseas.

23. With respect to the period after 15.03.2001, the above mentioned issues were addressed by bringing about legislative changes which comprised of amending the Act and the MCI framing the Screening Test Regulations, 2002 and the Eligibility Regulations. With respect to the period prior to 15.03.2001, the Supreme Court approved the guidelines, framed by MCI, in exercise of their powers under Article 142 of the Constitution of India.

24. In order to examine the rival contentions, it would be necessary to refer to the abovementioned legislative changes which were brought about in 2001 and 2002. Sub sections (4A) and (4B) to section 13 and clause (ma) to Section 33 were introduced by the Indian Medical Council (Amendment) Act, 2001 are reproduced as under:-

> **"13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.-**
>
> xxxx xxxx xxxx xxxx xxxx
>
> (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 qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the 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.

xxxx xxxx xxxx xxxx xxxx

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:-

xxxx xxxx xxxx xxxx xxxx

(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."

25. In addition to amendments to the Act, the above referred legislative changes included notification of the Eligibility Regulations and the

Screening Test Regulations, 2002 made by the MCI. The relevant extracts of the Eligibility Regulations as amended upto April 2010 (i.e prior to the amendments introduced in 2010) are reproduced below:

> "In exercise of the powers conferred by section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India, with the previous sanction of the Central Government, hereby makes the following regulations, namely:-
>
> 1. Short title and commencement-
>
> (1) These regulations may be called the Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002.
>
> (2) They shall come into force on the date of their publication in the Official Gazette.
>
> 2. Definitions:-
>
> xxxx xxxx xxxx xxxx
>
> (d) "Primary Medical qualification" means a medical qualification awarded by any medical institution outside India which is a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India;
>
> xxxx xxxx xxxx xxxx
>
> 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. The request for issue of Eligibility Certificate shall be made by the candidate in the proforma prescribed by the Council and shall be accompanied by the original certificate/mark-sheet (alongwith Photostat copy) of the qualifying examination. The original certificate shall be returned to the candidate after verifying the same with the photostat copy which shall be retained by the Council. Request shall also be accompanied by a Demand Draft for the specified sum in favour of Secretary, Medical Council of India, New Delhi. The fee shall be fixed by the Council.

xxxx xxxx xxxx xxxx

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."

The relevant extracts of the Screening Test Regulations, 2002 (prior to the amendment of 2010) are as under:

"In exercise of the powers conferred by section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India, with the previous sanction of the Central Government, hereby makes the following regulations, namely:-

1. Short title and commencement-

   (1) These regulations may be called the Screening Test Regulations, 2002.

   (2) They shall come into force on the date of their publication in the Official Gazette

2. Definitions:-

   xxxx xxxx xxxx xxxx

   (f) "Primary Medical qualification" means a medical qualification awarded by any medical institution outside India which is a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India;

   xxxx xxxx xxxx xxxx

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 15.03.2002 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 recognised 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."

26. The MCI issued an amendment notification dated 16.04.2010 notifying the "Screening Test Regulations (Amendments), 2010. By virtue of regulation 4 the said regulations the Screening Test Regulations, 2002 were amended by inserting clause 3 to regulation 4 of the Screening Test Regulations, 2002 (impugned regulation). The amendment notification is reproduced as under:-

"MEDICAL COUNCIL OF INDIA

AMENDMENT NOTIFICATION

New Delhi, the 16th April, 2010

No.MCI.203(9)/2010-Regn./3495. - In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following regulations to further amend the "Screening Test Regulations, 2002" namely:-

1. These regulations may be called the "Screening Test Regulations (Amendments), 2010".

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the "Screening Test Regulations, 2002", the following additions / modifications / deletions / substitutions, shall be, as indicated therein:-

4. The following shall be added after clause 4(2):-

"(3) He/She has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree."

(Lt. Col. (Retd.) Dr. A.R.N. Setalvad]
Secretary
Medical Council of India"

Clause 3 of regulation 4 of the Screening Test Regulations, 2002 are impugned in the present petitions.

27. In the backdrop of the aforesaid facts, the controversy that has to be addressed in the present case is whether the impugned regulation is inconsistent with the provisions of Section 13(4A) and (4B) of the Act and whether MCI has exceeded its powers as conferred under Section 33 of the Act. The second question to be considered is whether the impugned regulation is arbitrary and unreasonable and, thus, unconstitutional.

28. It is well settled that a delegated legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a Legislature. In addition to the grounds available to challenge the parent legislation, a challenge to the subordinate legislation can also be laid on the ground that it is inconsistent with the provisions of the plenary legislation. In the

present case, the Act was amended with the specific purpose of addressing the situation which had arisen in the wake of disintegration of the erstwhile USSR. Some of the students who had taken admissions in the erstwhile States of USSR had secured less than 50% marks in their High Secondary Examination and several had not studied Biology as a subject in schools. A number of such students had initially taken admission in institutes which were not recognized by the MCI and had subsequently migrated to recognized institutes. There was yet another category of students who had returned to India with medical degrees after undergoing courses which were less than the prescribed period of six years. The medical knowledge and skills of such persons were questioned and the MCI declined to enter their name in the Medical Registers. As noticed herein before, the action of the MCI resulted in writ petitions being filed before the Delhi High Court and the Allahabad High Court. The matter was considered by the Supreme Court and interim orders were also passed by the Supreme Court in terms of the Resolution passed by the MCI to mitigate the hardship being faced by the students. The Supreme Court while hearing the appeals in the matter of ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra)* made observations for the Government of India to formulate a policy. Keeping in view the observations made by the Supreme Court as well as the resolutions passed by the MCI, Section 13 of the Act was amended by the Medical Council (Amendment) Act, 2001. The said legislation addressed the controversy which was being considered by the Supreme Court. The Supreme Court noted the same while disposing of the matter in ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra).* It would, thus, be important to analysis the

scope of Section 13(4A) and 13(4B) of the Act in order to understand the purpose of formulating the Screening Test Regulations, 2002 and the Eligibility Regulations.

29. Section 13(4B) introduced an additional condition requiring an Indian citizen who was desirous of taking admission in an undergraduate medical course outside India, to obtain an Eligibility Certificate from the MCI certifying that they fulfilled the minimum eligibility criteria. It was further provided that a person who did not obtain such eligibility certificate would be ineligible to appear for the screening test. The legislative intent and policy as can be understood by the language of Section 13(4B) of the Act was to ensure that only those students who qualified the minimum criteria for admission into medical courses were permitted to undertake undergraduate medical courses. Clause (ma) was introduced in Section 33 of the Act to empower MCI to make regulations for issuance of eligibility certificates. Thus, any eligibility criteria that the MCI thought fit and which was relevant for the purpose of the Act would have to be complied with at the initial stage. This would address the issue with regard to students who were otherwise ineligible to pursue medical courses. Importantly, this would also address the issue of ensuring that the eligibility criteria for undertaking a course outside India is met at the threshold i.e. prior to a student taking admission in an undergraduate medical course outside India as opposed to questioning his eligibility after he has completed his medical course overseas.

30. Section 13(4A) of the Act provides for the other conditions that are required to be fulfilled by a citizen who has acquired his medical

qualification from outside India. The second condition for being enrolled on the Medical Registers as imposed under Section 13(4A) is that primary medical qualification acquired by an Indian citizen should be a recognized medical qualification for his enrolment as a medical practitioner in the country in which the institution awarding such qualification is situated. This condition requiring that the primary medical qualification acquired by an Indian citizen be a recognized qualification in the country of the institution ensures that there is some parity with the medical degrees being awarded in India. This condition addresses the issue with respect to those students who had undergone a part of the course from unrecognized institutions and also those students who had obtained degrees by undertaking courses which were shorter than the prescribed duration of a recognized course as such students may not be permitted to practice as a medical doctors in the countries in which they have acquired their primary medical qualification. In addition, Section 13(4A) also stipulated the condition requiring the Indian citizen possessing a primary medical qualification from outside India to undergo a screening test. The purpose of the screening test is to ensure that the standards in the medical profession are maintained and that the persons obtaining the medical degree from outside India have the requisite medical skill and knowledge.

31. The concept of conducting a post screening test owes its genesis to the meeting held on 06.11.1998 which was presided over by the Principal Secretary to the Prime Minister, Foreign Secretary, Senior Officials of MCI and the Ministry of External Affairs. A system of having a post screening test was decided to be adopted in the context of an alternative for

derecognizing medical institutions in the erstwhile USSR. It is, thus, obvious that the purpose of this examination was only to test the level of knowledge and skill and not to recognize any course or an institution. The idea to have a screening test was also followed through in the Resolution passed by the MCI at its meeting held on 03.01.2000 which was held pursuant to certain suggestions made by the Supreme Court in ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra)*. Clause (vii) of the resolution refers to conducting a screening test which was to be the same as conducted by the All India Institute of Medical Sciences, New Delhi for the candidates desirous of admission in the postgraduate courses in the institute. It was considered that this test would be most appropriate to test the knowledge of medical graduates from institutions in the Russian Federation and other CIS Countries.

32. The purpose of holding the screening test is also clear from the statement of objects and reasons of the Indian Medical Council (Amendment) Bill, 2001 which reads as under:-

> "1. The Indian Medical Council Act, 1956 contains provisions in Sections 12, 13 and 14 with a view to recognising medical qualifications granted by medical institutions in foreign countries.
>
> 2. Over a period of time it has come to notice that a large number of private agencies sponsor students for medical studies in institutions outside India for commercial considerations. Such students also include the students who did not fulfil the minimum eligibility requirements for admission to medical courses in India. Serious aberrations have been noticed in the standards of medical education in some of the foreign countries which are not at par with the

standards of medical education available in India. Due to lack of uniformity in the standards of medical education in various foreign countries, it has been decided that a provision should be made in the Indian Medical Council Act, 1956 to enable the Medical Council of India to conduct a screening test in order to satisfy itself with regard to the adequacy of knowledge and skills acquired by citizens of India who obtain medical qualifications from universities or medical institutions outside India before they are granted registration to practice medicine in India.

3. Further, issue of prior eligibility certificate by the Medical Council of India would ensure that only those candidates who conform to the Council norms of admission to the medical college in India would go for undergraduate medical education outside India.

4. The Bill seeks to achieve the above objects."

33. The provisions of Section 13(4A) and 13(4B) of the Act as well as the circumstances which lead to the legislative enactment by virtue of which Section 13(4A) and 13(4B) were introduced, clearly indicate that the purpose of the Screening Test is limited to test the professional knowledge of graduates who have obtained their primary medical qualification from outside India. In this context, it is relevant to note that the power conferred on the MCI with regard to making regulations in respect of the screening test is also limited under Clause (ma) of Section 33 to only make regulations for "the modalities for conducting screening tests". Considered in this context, the impugned regulation is wholly inconsistent with the provisions of Section 13(4A) and 13(4B) in so far as it now seeks to prescribe an additional condition with regard to eligibility of persons to appear in the screening test. Prescribing eligibility for appearing in the

screening test is not the purpose of empowering the MCI to make regulations concerning the modalities for conducting the screening test. The conditions of eligibility have already been specified under the Act. In addition, the MCI has been empowered to make regulations regarding issuance of the eligibility certificate. Thus, the MCI can make regulations imposing eligibility conditions for undertaking the screening test, however, the same can be made only in respect of regulations for issuance of an eligibility certificate under Section 13(4B). Thus, while it is open for the MCI to make regulations which prescribe conditions which are required to be fulfilled by a candidate to be eligible to undertake a course overseas as well as to be eligible to undertake the screening test, the same have to be operative at the threshold stage when a candidate applies for undertaking a medical course from an institution outside India and not after he has already proceeded abroad to undertake such course after obtaining an eligibility certificate. A candidate who has not obtained the eligibility certificate as contemplated under Section 13(4B) would be ineligible to appear for the screening test as contemplated under Section 13(4A). This having been provided under Section 13(4B), it would be wholly inconsistent for the MCI to add a further eligibility condition in the Screening Test Regulations, 2002. In the above perspective, the power granted to the MCI with respect to the Screening Test has to be limited to make regulations in respect of the modalities for conducting the screening test.

34. The power to make regulations with regard to issuance of an eligibility certificate is not only consistent with the scheme of the Act as can be understood from Section 13(4A) and 13(4B) but would also be in

conformity with the principle of reasonableness and fairness enshrined in the Constitution of India. In the event that a condition accepting a person as professionally qualified is concerned, the same must be prescribed at the stage when a person commences his course for acquiring such professional qualification. It would be most unreasonable, if such a condition is imposed after he has spent several years undergoing a course to obtain the professional qualification. It would be patently unfair, if a person who has spent several years to acquire his primary medical qualification is at the end of the course told that he is ineligible to be recognized as a medical practitioner. This was precisely the situation that was being considered by the Supreme Court in ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra)* and the legislative scheme to provide for eligibility certificate was evolved while the matter was pending in the Supreme Court and pursuant to the suggestion made therein.

35. In ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra),* the Supreme Court approved certain guidelines in exercise of powers to do substantial justice under Article 142 of the Constitution of India. The said guidelines are reproduced as under:-

> **"6.** In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15-3-2001, the following guidelines are placed before this Court by the Government of India:
>
> (*A*) The case of all persons who applied for registration to MCI prior to 15-3-2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:

(*i*) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in a recognised institution plus the internship, would be seven years, which is the requirement even otherwise.

(*ii*) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.

(*B*) All students who have taken admission abroad prior to 15-3-2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the screening test even if they also come in the categories of circumstances contained in (*A*)(*ii*) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15-3-2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15-3-2002. From 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.

(*C*) The categories of students not covered in (*A*)(*i*) and (*ii*) above and whose entire period of study has been in a medical college not recognised by MCI, will be allowed to appear in the screening test for the purpose of their registration provided they fulfil all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be a qualification recognised for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling the minimum eligibility qualification laid down by MCI for taking admission in an undergraduate medical course in India. They shall not be entitled to any relaxation."

36. It is relevant to note that above guidelines approved by the Supreme Court ensured that even those students who were ineligible to take admission in medical courses and had proceeded abroad prior to 15.03.2002 to obtain a medical qualification would nonetheless be entitled to take the Screening test. It is apparent that this was necessary as it would be most arbitrary to introduce a condition of eligibility to recognize a qualification after a student has proceeded to commence the course to obtain such qualification.

37. It would also be relevant to state that MCI has also made the Eligibility Regulations. These regulations were framed simultaneously with the Screening Test Regulations, 2002 and as a part of the legislative scheme alongwith Section 13(4A) and 13(4B) which was introduced to address the issues raised that were being considered by the Supreme Court in ***Medical Council of India v. Indian Doctors from Russia Welfare Association*** *(supra).* The students who had proceeded to take admission in institutions outside India, prior to 15.03.2002, would be entitled to take the screening

test by virtue of the direction under Article 142 of the Constitution of India and the condition prescribing eligibility to undertake course overseas and appear for the screening test would be implemented prospectively by virtue of the Eligibility Regulations.

38. The impugned regulation has a retrospective effect in as much as that it would adversely affect those students who on the basis of the eligibility certificate have proceeded overseas and have completed their medical course and obtained their primary medical qualification or are in the process of doing so. It is well settled that the legislature has the power to make retrospective legislation, however, unless there are compelling reasons for making legislations with retrospective effect in public interest, the same are liable to be declared as unreasonable or arbitrary and violative of Article 14 of the Constitution of India. In case of delegated legislation, unless the power to make retrospective legislation is granted expressly or by necessary implication, such subordinate legislation cannot be made. In the present case, we cannot infer that any such power has been granted to the MCI. In any event, in the present case, the MCI has not indicated any compelling reason as to why the impugned regulation, having a retrospective effect, was necessary.

39. It is important to note that the aforementioned Eligibility Regulations have also been amended by "Eligibility requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations (Amendment), 2010" notified on 16.04.2010. The relevant extract of the aforesaid amendment notification is as under:-

"MEDICAL COUNCIL OF INDIA

AMENDMENT NOTIFICATION

New Delhi, the 16th April, 2010

No.MCI.203(9)/2010-Regn./3494. - In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following regulations to further amend the "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002" namely:-

1. These regulations may be called the "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, (Amendments), 2010".

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002", the following additions / modifications / deletions / substitutions, shall be, as indicated therein:-

4. The following proviso shall be added to clause 9:-

"Provided that he/she has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree."

40. The MCI has, thus, added the condition that a student proceeding overseas to undertake a medical course would be eligible to join a medical

institution outside India to obtain his medical qualification and on his return would undergo a screening test provided that he has studied for the medical course at the same institute for the entire duration of the course. The proviso to regulation 9 of the Eligibility Regulations is similar to the impugned regulation. However, the material difference is that whereas the MCI is empowered to make regulations with regard to issuance of an eligibility certificate and, thus, prescribe conditions therein regarding eligibility to undertake the screening test, the MCI is not empowered to add any such condition in the Screening Test Regulation, 2002.

41. In ***J.K. Industries Ltd. v. Union of India*: (2007) 13 SCC 673,** the Supreme Court considered the question as to whether the Accounting Standard 22 (AS 22) titled "accounting for taxes on income" prescribed by the Central Government under Section 211(3C) of the Companies Act read with the Companies (AS) Rules 2006 insofar as it related to deferred taxation was inconsistent with and *ultra vires* the provisions of the Companies Act, 1956 (the Companies Act), the Income-tax Act, 1961 (I.T. Act) and the Constitution of India. The observations of the Supreme Court in the context of a challenge to a subordinate legislation are also relevant in the context of the present case and are reproduced hereunder:

> **"127.** At the outset, we may state that on account of globalisation and socio-economic problems (including income disparities in our economy) the power of delegation has become a constituent element of legislative power as a whole. However, as held in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*[(1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed

by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. *It may further be questioned on the ground that it is inconsistent with the provisions of the Act* or that it is contrary to some other statute applicable on the same subject-matter. Therefore, it has to yield to plenary legislation. It can also be questioned on the ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be in conformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution.

xxxx xxxx xxxx xxxx xxxx

133. It is well settled that, what is permitted by the concept of "delegation" is delegation of ancillary or subordinate legislative functions or *what is fictionally called as "power to fill up the details"*. The judgments of this Court have laid down that the legislature may, after laying down the legislative policy, confer discretion on administrative or executive agency like the Central Government *to work out details within the framework of the legislative policy laid down in the plenary enactment*. Therefore, power to supplement the existing law is not abdication of essential legislative function. Therefore, power to make subordinate legislation is derived from the enabling Act *and it is fundamental principle of law which is self-evident that the delegate on whom such power is conferred has to act within the limitations of the authority conferred by the Act*. It is equally well settled that rules made on matters permitted by the Act in order to supplement the Act and not to supplant the Act, cannot be held to be in violation of the Act. *A delegate cannot override the Act either by exceeding the*

authority or by making provisions inconsistent with the Act. (See *Britnell*v. *Secy. of State for Social Security* [(1991) 1 WLR 198 : (1991) 2 All ER 726 (HL)] , All ER at p. 730.)"

(underlining added)

42. In the present case, the petitioner has been granted an eligibility certificate to undertake the course to obtain his primary medical qualification from an institute outside India and thus, further conditions of eligibility cannot be now introduced with respect to the petitioner or other similarly placed students. The power to make regulations conferred by the Act on the MCI can only be used in furtherance of the legislative policy and not in variance thereof. In our view, the impugned regulation is inconsistent with the scheme of the Act as well as in excess of the powers as conferred under Section 33 of the Act and is liable to be struck down.

43. The contention that the impugned regulation has been referred by the Supreme Court in ***J. Saai Prasanna & Anr.*** *(supra)*, while considering the contentions raised therein and thus the said regulation is valid is, in our opinion, wholly erroneous. The Supreme Court in that case was considering the case of students who had completed their MBBS course from a foreign university. Some of those students had completed their first two terms at a medical college in India. These students had successfully taken their screening test conducted by the National Board of Examination. These students were denied enrolment by MCI as medical practitioners, as MCI contended that students who had undergone training in institutions in India which had not obtained permission from the Central Government, would be ineligible for registration as medical practitioners. This contention

was rejected by the Supreme Court as the Court held that the conditions of eligibility were specified in Section 13(4A) of the Act as well as in the regulations made under the Act. The Supreme Court further rejected the apprehension expressed by MCI that unscrupulous operators would make students commence and undertake courses in unauthorized institutions in India and make them take their examination in a foreign country. The Supreme Court held that this apprehension was without any basis in view of Clause (3) of regulation 4 of the Screening Test Regulations, 2002 (impugned regulation). The issue whether the said regulations were valid or not was not the subject matter before the Supreme Court. Further, a provision similar to the impugned regulation has been introduced as a proviso to regulation 9 of the Eligibility Regulations. Thus, the apprehension expressed by MCI would be equally without basis by virtue of the Eligibility Regulations as amended on 16.04.2010. We cannot read the judgment of the Supreme Court in ***J. Saai Prasanna & Anr.*** *(supra),* as deciding upon the validity of the impugned regulation.

44. Reliance placed by the learned Counsel for the MCI on the decision of the Supreme Court in ***Azadi Bachao Andolan & Anr.*** *(supra)* also does not further the case of the MCI as it is well settled that whether a particular subordinate legislation is in excess of the powers conferred by a statute has to be determined not only with regard to the particular rule making power but also with respect to the purpose of the principal statute. It is a common feature in several statutes to empower making of Rules and Regulations which are expressed in general terms such as to carry out the purpose of statute and in addition without prejudice to the generality of the power

conferred, specific clauses and/or particular heads are also specified. In the present case also Section 33 of the Act empowers the MCI "to make regulations generally to carry out the purposes of this Act" and without prejudice to this generality, it is specified that the regulations may provide for various particular aspects which are listed in various clauses of Section 33 of the Act. In such circumstances, it is settled law that it is not necessary that the subordinate legislation falls squarely within a particular topic as specified by a clause. As long as the subordinate legislation is guided and draws from the policy specified by the Act, the subordinate legislation would not be in excess of the power conferred. In the present case, the impugned regulation runs contrary to the policy as is discernable from the express language of Section 13(4A) and 13(4B) of the Act. In the present case, clause (ma) of Section 33 of the Act which restricts the power of the MCI to make regulations only with regard to the modality of conducting the screening test in fact embodies the legislative policy as can be understood from Sections 13(4A) and 13(4B) of the Act. Thus, in our view, in the present case, the impugned regulation is in excess of the powers conferred by the Act. The impugned regulation would not be saved by the opening words of section 33 of the Act as it militates against the legislative policy embodied in section 13(4A) and 13(4B) of the Act.

45. In view of the above, we are of the view that impugned regulation is *ultravires* the Act and is liable to be set aside. The impugned regulation would also be arbitrary and unreasonable to the extent that it seeks to deprive the students who have already been granted an eligibility certificate from appearing in the screening test.

46. We, therefore, quash Clause (3) of regulation 4 of the Screening Test Regulations, 2002 and allow the present writ petitions.

47. The parties are left to bear their own costs.

VIBHU BAKHRU, J

BADAR DURREZ AHMED, J

SEPTEMBER 27, 2013
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HIGH COURT OF DELHI
सत्यमेव जयते