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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 08.10.2015

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Judgment Pronounced on: 17.12.2015

+ **W.P.(C) 3414/2015**
MADHUR ESHWAR RAO BASUDE & ORS Petitioners

Versus

MEDICAL COUNCIL OF INDIA & ANR Respondents

+ **W.P.(C) 4137/2015 & CM No.7505/2015**
DR. ROHAN OMPRAKASH TALOKAR Petitioner

Versus

MEDICAL COUNCIL OF INDIA (MCI) & ORS. Respondents

+ **W.P.(C) 3141/2015**
KU-MEMG DOCTORS ASSO. Petitioner

Versus

MEDICAL COUNCIL OF INDIA AND ORS. ... Respondents

Present: Mr.Prashant Bhushan, Adv. with Ms. Neha Rathi, Mr. Govind Jee, Advs. for the petitioners.
Mr.Vikas Singh, Sr.Adv. with Mr.T.Singhdev, Adv.for MCI.
Mr.Ashish Dholakia, Adv. with Mr.Mohd.Shariq, Adv. for R-2 in W.P.(C) No.3141/2015.
Mr.Vivek Singh, Adv. for R-3 in W.P.(C) 3414/2015.
Mr. Manish Mohan, CGSC with Mr. Shivam Chanana, Adv. for R-2/UOI in W.P.(C) No. 3414/2015.
Mr.Ruchir Mishra, Adv. with Mr.Mukesh Kr.Tiwari, Adv. for UOI in W.P.(C) No.4137/2015.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. By the present judgment, we shall dispose off all the aforesaid three Writ Petitions, namely W.P.(C) Nos.3414/2015, 4137/2015 & 3141/2015. All the three Writ Petitions seek directions to recognize

postgraduate qualifications obtained from a Medical Institution outside India to enable them to have their postgraduate qualification entered into the State/Indian Medical Register.

2. In the present judgment, we have stated the facts of Writ Petition (C) No.3414/2015.

3. The said writ petition is filed seeking a writ of mandamus to the respondents, namely, the Medical Council of India and Union of India to conduct suitable screening test for citizens of India having postgraduate qualification from a medical institution outside India including the petitioners, so as to enable them to have their post-graduate qualifications entered in the State/Indian Medical Register. Other connected reliefs are also sought.

4. As per the petition, the petitioners are doctors with postgraduate qualification (MD/MS) from Zeng Zhou University, China. Petitioner No.1 has obtained his MBBS degree from India and then went to China for post-graduation. Petitioners No.2 to 4 have also done their graduation from the said Zeng Zhou University. The petitioners No. 2 and 3 have cleared the screening test to have their foreign MBBS qualification recognized in India whereas petition No.4 is yet to give the screening test.

5. It is urged that under Section 13(4A) of the Indian Medical Council Act, 1956 (hereinafter referred to as 'IMC Act'), there exists a provision for holding a screening test to be conducted by respondent No.1 for Indian Citizens obtaining medical qualifications from abroad. On clearing of this test, the said candidate gets his/her medical qualification entered in the Indian Medical Register or the State Medical Register.

6. The grievance of the petitioners is that respondent No.1, the Medical Council of India (MCI) is not conducting screening tests on the passing of which doctors can get their specialist MS/MD degrees

registered in India. This according to the petitioners has resulted in a prohibition cast upon the members of the petitioners' association.

7. It is urged in the petition that the omission on the part of respondent No.1 to conduct the said screening test is in violation of Article 14 of the Constitution of India. It is further urged that a perusal of Section 13(4A) of the IMC Act shows that the provision for holding a screening test was introduced by an amendment in the IMC Act in 2001 to enable any medical qualification acquired in any institution outside India to be recognized in India subject to limitations. It is stated that the legislature contemplated multiple screening tests for different qualifications.

It is further urged that after the amendment in the IMC Act and insertion of Section 13(4A) the Screening Test Regulations, 2002 were also framed. These Regulations, however, deal with medical qualifications, equivalent to MBBS in India and not post-graduation. This it is urged is contrary to the IMC Act.

It is further urged that India has one doctor per 1700 citizen while WHO mandates a minimum ratio of 1: 1000. Hence, India would need 4 lacs more doctors by 2020. However, according to the petitioners, 20% of the posts of specialists and assistant surgeons in the peripheral hospitals are lying vacant. Hence, there is a pressing need for doctors and specialists. Holding of a screening test for post graduate qualifications will bring in more Specialists.

It is further stated that respondents have in 2008 recognized post-graduation qualifications from five countries i.e. U.S.A, U.K., Canada, Australia and New Zealand as good to practice in India as specialists without any screening test on the ground that the reputation of these five countries is as a good education provider. It is urged that Zeng Zhou

University is recognized by respondent No.1 for under graduate study. The postgraduate programme undergone by the petitioners is at par with that prescribed by MCI. The said Zeng Zhou University is one of the largest hospitals in the world and the medium of instructions in the University is also in English. Hence, it is urged that there can be no reason to leave out post graduation qualifications from the same University.

Reliance is also placed on the Dental Council of India Screening Test Regulations, 2009 where even for postgraduates from abroad, a screening test is conducted to recognize the degree.

It is further urged that classification is permissible only if it is based on intelligible differentia. In this case there is no justification to not hold screening test for post graduation, while holding it for only graduation. Hence, the non holding of screening test for post gradation is hit by Article 14 of the Constitution of India.

8. MCI has filed its counter-affidavit. It is urged that the present petition is contrary to the statutory, mandatory and binding regulations framed by MCI with prior approval of Union of India. It is urged that pursuant to the amendment in the IMC (Amendment) Act, 2001, “The Screening Test Regulations, 2002” and “The Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002” were published in the official gazette. These regulations do not provide for a screening test for post graduation. Reliance is placed on the judgment of the Supreme Court in the case of *Medical Council of India vs. Indian Doctors from Russia Welfare Associations & Ors.*, (2002) 3 SCC 696 and *Sanjeev Gupta & Ors. vs. UOI & Ors.*, (2005) 1 SCC 45 to contend that the Supreme Court

upheld the validity of the aforementioned two regulations in the said judgments.

9. It is further pointed out that under the Scheme of the IMC Act, Section 15 postulates that the registration of a medical practitioner shall be in the State Medical Register. Section 21 casts an obligation on respondent No.1 to maintain the Indian Medical Register containing the names of all persons who are enrolled in the State Medical Register. Section 26 provides for registration of additional qualification. It is urged that Sections 13(4A) and (4B) of the Act deal with undergraduate medical courses in any institution abroad. The postgraduate qualifications obtained by the petitioners, it is urged, are not recognised medical qualifications for the purpose of the IMC Act and do not entitle the petitioners to any benefit of the same.

10. Respondent No. 2, Union of India have also filed a short affidavit where they have reiterated that there is no provision in the Regulations of respondent No. 1 for a screening test for the citizens of India having postgraduate qualifications from medical institution outside India.

11. We have heard learned counsel for the parties and perused the record.

12. Learned counsel appearing for the petitioner has stressed that a bare reading of section 13(4A) of the IMC Act shows that it uses the expression “Medical Qualification Granted by any medical institution in any country outside India”. It is urged that a reading of this provision clearly shows that it is also applicable to post graduate qualifications and is not confined to only a primary medical degree of MBBS. It is further urged that respondents have contrary to the statutory provisions enacted regulations, namely, “The Screening Test Regulations 2002” and “The Eligibility Requirement for Taking Admission in an Undergraduate

Medical Course in a Foreign Medical Institution Regulations, 2002” which only deal with students who have obtained a primary medical degree from foreign institutions. Hence, the mandate of the section i.e. being applicable to all medical qualifications from outside India has been stifled by the respondents in this manner. Reliance is next placed on the Dental Council of India Screening Test Regulations which provides for a screening test for post graduates from abroad. It is urged that when the screening test for post graduation can be done by the Dental Council, there can be no reason for respondent No.1 to adopt a different course. It is further submitted that the mandate of Sections 26 and 27 of the IMC Act is being ignored by the respondents in not holding any screening test for postgraduate qualification. It is urged that the respondents have the power to hold the screening test and hence, it is their duty to exercise the said power.

13. The learned counsel appearing for the respondents contended that a reading of Section 13(4A) of the IMC Act read with Regulations 2002 shows that no screening test is envisaged for postgraduate qualifications. Reliance is also placed on the judgment of Allahabad High Court in the case of *Astha Midha v. Union of India & Ors., 2015 (8) ADJ 613(MANU/UP/1328/2015)* to support the contention that Section 13(4A) of the Act does not envisage holding of any screening test for postgraduate qualifications. It is further urged that a primary medical qualification mostly relates to theoretical knowledge whereas postgraduate qualifications entail intensive experience which cannot be judged on the basis of a screening test. Hence, it is urged that the relief sought by the petitioners relating to postgraduate qualification is completely without merit. It is further urged that admittedly the regulations do not stipulate holding of a screening test pertaining to

postgraduate qualification. No writ of mandamus can be issued directing the respondent to issue any such regulation. .

14. We may first look at the relevant provisions of the IMC Act. Section 13(4A) of the Medical Council Act reads as follows:-

“13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First of Second Schedule.

.....

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India, recognized 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.

....”

Section 15(1) reads as follows:-

15. Right of persons possessing qualifications in the schedules to be enrolled.

[(1)]. Subject to the other provisions contained in this act, the medical qualifications included in the schedules shall be sufficient qualification for enrolment on any state medical register.

Section 21 (1) deals with the Register of Medical Practitioner and states as follows:-

“21. The Indian Medical Register.

(1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.
.....”

Section 23 reads as follows:-

“23. Registration in the Indian Medical Register.- The Registrar of the Council, may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register, Provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification.”

Section 26 reads as follows:-

“26. Registration of additional qualification.-

(1) If any person whose name is entered in the Indian Medical Register obtains any title, diploma or other qualification for proficiency in sanitary science, public health or medicine which is a recognized medical qualification, he shall, on application made in this behalf in the prescribed manner be entitled to have an entry stating such other title, diploma or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.

(2)The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register.”

Section 27 reads as follows:-

“27. Privileges of persons who are enrolled on the Indian Medical Register

Subject to the conditions and restrictions laid down in this Act, regarding medical practice by persons possessing certain recognised medical qualifications, every person whose name is for the time being borne on the Indian Medical Register

shall be entitled according to his qualifications to practice as a medical practitioner in any part of India and to recover in due course of law in respect of such practice any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled.”

15. A reading of section 13(4A) of the Act shows that it deals with the citizens of India who have obtained medical qualifications from a medical institution in any country abroad which is recognized for enrolment as a medical practitioner in that country. The section hence deals with the primary medical qualifications i.e. inasmuch as the same would entitle a person to be a medical practitioner of the contrary concerned.

16. Further, under Section 15 (1) of the Act on attaining a medical qualification included in the schedule, a person is entitled to enrolment on the State Medical Register. This registration in the State Medical Register means the name will also be placed on the Indian Medical Register under section 21. Under Section 27 any person whose name is borne on the Indian Medical Register is entitled to practice as a medical practitioner in any part of India. It is the primary medical qualification which entitles a person to be registered on the Indian Medical Register and to practice as a medical practitioner. Section 13 (4A) of the Act deals with a screening test to enable a person who has obtained a medical degree from a foreign institution, to be enrolled on the medical register maintained by the State Medical Council/Indian Medical Register. Hence, Section 13 (4A) of the Act is clearly dealing with a primary medical degree. For post graduate qualifications Section 26 is the relevant section. It provides for an entry being made regarding other qualifications in the Indian Medical Register against his name either in substitution/or addition to any entry previously made.

17. The Division Bench of the Allahabad High Court in the case of *Astha Midha v. Union of India & Ors. (supra)* have taken a similar view. That was a case pertaining to a candidate who had completed her MBBS degree from Hebel University, China. She had cleared the screening test and enrolled on the State Medical Register maintained by the State Medical Council of Uttar Pradesh. She pursued her postgraduate studies at a Medical College in Nepal where she obtained a master degree in General Surgery. As recognition of the masters qualification was denied to her, a writ petition was filed. The Allahabad High Court in those facts held as follows:

“14. These provisions indicate that sub-section (4A) applies at the stage where the person who obtains a medical qualification from an institution situated in any country outside India is still to be enrolled on a State Medical Register and is yet to have his or her name entered in the Indian Medical Register. The consequence of passing a screening test is that the person would be entitled to have his or her name registered on the Medical Register maintained by the State Medical Council or to have his or her name registered in the Indian Medical Register. These provisions make it clear that the object and purpose of a screening test is not to recognise an additional medical qualification which is obtained by a student after being registered on the State Medical Register or as the case may be after his or her name is entered in the Indian Medical Register. Once the student on the strength of a medical qualification which is obtained from an institution situated outside India has appeared at the screening test and upon qualifying the screening test has been enrolled on a State Medical Register or, in consequence, has been entered upon the Indian Medical Register, the purpose of the screening test is duly met. Section 13(4A) does not apply at a stage where the person who is already enrolled on the State Medical Register obtains an additional qualification in terms of a postgraduate degree from an institution abroad.

16. Section 26(1) deals with a situation where a person who is already on the Indian Medical Register has inter alia obtained a qualification in medicine which is a recognised medical qualification. The expression "Recognised Medical Qualification", it must be noted, is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules. A person who obtains a recognised medical qualification is, on an application made in that behalf, entitled to have an entry stating such qualification against his or her name in the Indian Medical Register. The purpose of having a screening test in Section 13(4A) is not to enable an additional qualification within the meaning of Section 26 to be entered against the name of a person in the Indian Medical Register. This can be done under sub-section (1) of Section 26 where the qualification itself is a recognised medical qualification.”

18. There is no merit in the contention of the petitioner that section 13(4A) of the IMC Act deals with post graduate degrees also.

19. Further, the two regulations which have been framed by the respondents dealing with registration of foreign decrees on a Medical Register, namely, “the Screening Test Regulations, 2002” and “The Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002” also deal only with Indian citizens who have obtained foreign degrees equivalent to MBBS.

20. Coming to the other contentions of the petitioner, reference may be had to the judgment of the Supreme Court in the case of *Sanjeev Gupta & Ors. vs. UOI & Ors. (supra)*. The facts which lead to filing of the writ petition was that the petitioners comprised of various lots of students who had done their MD Physician course equivalent to MBBS in India from countries forming parts of erstwhile USSR. One group of writ petitioners went to pursue their course in 1994 and second in 1995. The batch of

1994 completed their MD Physician course on June 2001. The batch of 1995 completed the same in June 2002. The IMC Act was in the meantime amended in 2001 which was published in the official gazette on 3.9.2001. The MCI took the stand that after the Act is in force, those seeking provisional or permanent registration after that date mandatorily require to qualify the screening test. In those facts the Supreme Court noted the provisions of section 13(4A) of the IMC Act and the Regulations brought into force by the respondent in connection with holding of the screening test and dismissed the writ petition holding as follows:-

“48. MCI is the expert body which can lay down the criteria for grant of the permanent registration to a person to practice medicine and involving himself in the patient care and management. Otherwise also we are not inclined to permit the petitioners to practice medicine overriding the provisions of the Act as the Court has to take into consideration the interest of the public at large as well. A person who is not duly qualified as prescribed by the MCI cannot be permitted to involve himself in public health care and play with the lives of human beings. It is not for this Court to decide as to who is duly qualified to practice medicine. MCI being the expert body is the best judge to do so. After a thorough examination of the entire issue the MCI has come to the conclusion that after disintegration of USSR due to serious aberrations in the system of recruitment and admission of students in institutions located in Russia, there was a decline in the standards of medical education in these countries. In this backdrop the MCI keeping in view the interest of the public at large and the students passing from these institutions decided that the students would be required to do internship for one year as well as to qualify the screening test before they could be given a permanent registration involving themselves in the public health care.”

21. Similarly, in the case of *Yash Ahuja and Others vs. Medical Council of India and Others*, (2009) 10 SCC 313 the Supreme Court again went into the issue of screening test under section 13(4A) of the Act and Regulations and dismissed the appeal.

22. MCI has taken a clear stand that statutory provisions do not stipulate holding of a screening test for recognition of post graduate medical degrees obtained from foreign universities by Indian citizens. Their stand also is that it is not desirable to hold such test for foreign degrees. Hence, an expert body on the subject has in their wisdom thought it not fit to provide recognition for post graduate degrees obtained by persons from foreign universities other than those stipulated in the Schedule. We see no reason to take a different view than the one taken by MCI/respondent No.1.

23. The writ petitions are without merits and the same are dismissed.

**JAYANT NATH
(JUDGE)**

CHIEF JUSTICE

DECEMBER 17, 2015

rb/v/n