

THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1136 of 2015

IN

Civil Writ Jurisdiction Case No. 20894 of 2014

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1. Aiman Kamal Daughter of Sri Abuzar Kamaluddin , resident of Azad Road Chandwara, Kamal Lane , P.S.- Kotwali, District-Muzaffarpur.

.... Appellant/s

Versus

1. The Medical Council of India through its Secretary, Pocket-14, Sector-8, Dwarika, New Delhi.
2. The Chairman, Medical Council of India, Pocket- 14, Sector-8, Dwarika, New Delhi.
3. The Secretary , Medical Council of India, Pocket- 14, Sector-8, Dwarika, New Delhi.
4. The Deputy Secretary, Medical Council of India, Pocket- 14, Sector-8, Dwarika, New Delhi.
5. President, Medical Council of India (Bihar), Road No. 11B, Rajendra Nagar, Patna- 800016.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Advocate
With Rajesh Kumar

For the Respondent/s : Mr. Y. V. Giri, Sr. Advocate
With Mr. Kumar Brijnandan

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 23-08-2016

A candidate having obtained certificate of passing Intermediate examination in the subject *Biology* in accordance with Regulation 13 of the Bihar Intermediate Education Council, Patna, after having obtained certificate of passing Intermediate



examination in Science with the subjects Physics, Chemistry and Mathematics, whether can be said to have passed the qualifying examination for admission to MBBS course under Regulation 4(2) of the Regulations on Graduate Medical Education, 1997, is the core and the sole issue involved in the present appeal preferred by the appellant under Clause 10 of the Letters Patent of this Court, assailing the order passed by a learned single Judge of this Court.

2. Appellant herein is aggrieved by an order, dated 26.03.2015, passed by learned single Judge whereby her writ application filed under Article 226 of the Constitution of India, which gave rise to CWJC No. 20894 of 2014, has been dismissed.

3. In order to appreciate the background and the context in which the aforesaid issue has arisen, the facts of the case and the statutory provisions, dealing with the dispute, need to be outlined, first.

4. The appellant passed Intermediate examination held by the Bihar Intermediate Education Council, Patna, with Physics, Chemistry and Mathematics in first division in the year 2005. She had English as a compulsory subject. The Intermediate examination, held by Bihar Intermediate Education Council, is governed by Bihar Intermediate Education Council (Establishment of Colleges and Conduct of Examination) Rules, 1994 (hereinafter

referred to as the Rules of 1994). The Rules have been framed in exercise of powers conferred by the proviso to Section 54(2) of the Bihar Intermediate Education Council Act, 1992. As is apparent from the nomenclature, the Rules of 1994 regulate establishment of Colleges/Institutions for imparting education of Intermediate (+2) standard and conduct of examination at that level. Rule 11 of the Rules of 1994 provides for the courses of study. Sub-Rule (1) of Rule 11 contemplates that Courses of study for Intermediate (+2) class shall be prescribed by the Council on the recommendation of the Courses of Study Committee. Sub-Rule (2) of Rule 11 provides that courses shall be of two academic years' duration. Sub-Rule (3) provides that number of lectures, tutorials and practical classes per week, in a subject paper, shall be prescribed by regulations. For ready reference, Rule 11 of the Rules of 1994 is being extracted hereinbelow:-

- “11. (1) Courses of study for Intermediate (+2) class shall be prescribed by the Council on the recommendation of the Courses of Study Committee.
- (2) The courses shall be of two academic years' duration.
- (3) Number of lecture, tutorial and practical classes per week in a subject paper shall be prescribed by regulations.
- (4) Before the end of the second academic year, there shall be a public examination.
- (5) In one academic year there shall be at least 200 working days.
- (6) No student shall be sent-up for the final examination unless he has attended at least 75 per cent of the total classes held.”

5. As is evident from the above, Rule 11(4) prescribes that

there shall be a public examination before the end of second academic year.

6. Further, the Bihar Intermediate Education Council has framed Regulations for the Intermediate examination in Arts, Science and Commerce, which prescribes, *inter alia*, qualification for admission to Intermediate examination. Regulation 1 of the said Regulations reads thus:-

“Any enrolled student of the Bihar Intermediate Education Council may be admitted to the Intermediate Examination in Arts Science and commerce, if he has completed in one or more institutions imparting education of Intermediate standard as laid down under Section 39 of the Bihar Intermediate Education Council Act, 1992 a regular course of study prescribed for the subjects which he offers, for not less than two academic years after passing the Secondary School Examination of the Bihar School Examination Board or any other examination recognized by the Council as equivalent there to.”

7. Regulation 13 of the said Regulations is for such candidates, who have passed the Intermediate examination in Arts, Science and Commerce, but are desirous of appearing in any one subject of Intermediate examination under the Regulation, other than the subject, in which he had already passed. This is to be noted, thus, that Intermediate Courses are of two academic years' duration. The appellant had successfully completed the

Intermediate course in the subjects Physics, Chemistry and Mathematics after completing the period of two academic years'. Regulation 13 of the examination Regulations gives a candidate an opportunity to appear in any one subject after passing of the Intermediate examination, other than the subjects in which he has already passed. Regulation 13, however, lays down a condition that if the subject, so offered by the candidate, is one for which practical examination is prescribed, the candidate will be required (a) complete a regular course of practical work for a period of, at least, one year in an Institution as mentioned in Clause (1); and (b) produce a certificate from the Principal of that College to that effect. Regulation 13, which is crucial for decision of this case, is, now, being reproduced hereinbelow:-

“13. Qualifying examination in the subject:

A candidate who has passed the Intermediate Examination In Arts, Science or Commerce may, if he so desires, appear in any one subject of the Intermediate Examination under this regulation, other than the subjects in which he has already passed and if he secures at least the minimum pass marks prescribed for the subject, he shall be given a certificate to that effect. Attendance at lectures and tutorials shall not be compulsory. But, if such a candidate offers a subject in which a practical examination is prescribed (other than Music and Home Science) he shall be required to complete a regular course of practical work for a period of at least one year in an Institution as mentioned in clause(1) and to produce a certificate from the Principal of the College to that

effect.”

8. It is the case of the appellant, which fact is not in dispute, that after having passed the Intermediate examination in Physics, Chemistry and Mathematics with English as a compulsory subject, she got herself re-admitted in Intermediate Course for the subject Course in T.P.S. College, Patna, in the year 2005 itself. Upon completion of one year, she appeared in Biology paper of 2006, Intermediate examination, which she passed with 64% of marks. A certificate to the effect that she appeared as a regular student of T.P.S. College, Patna, and passed the Annual Intermediate Examination, in the year 2006, in the subject, which she has offered, i.e. Biology, was issued by the Principal of the College. Annexure-3 to the writ application is the mark-sheet showing that she scored 128 out of 200 in Biology in the examination held in the year 2006. On the basis that she had passed Intermediate Course in Physics, Chemistry and Mathematics in the year 2005 and Biology, in the year 2006, she applied for, and secured admission in, the year 2007-2008 in National Medical College, Birganj, which is an affiliated and recognized College of Tribhuwan University, Kathmandu (Nepal) and said to be recognized Institution of Nepal Medical Council. She passed her final MBBS examination in the year 2014.



9. She, being a citizen of India, having pursued her MBBS course in Nepal, willing to get registration by the Medical Council of India, applied for eligibility certificate as required under Section 13(4) of the Indian Medical Council Act, 1956. The Medical Council of India, however, rejected her request through a communication, dated 23.08.2011, on the ground that she had studied Biology subject as an additional subject after passing her 12th qualification, whereas, according to the Regulations of the Council on Graduate Medical Education Council, 1997, a candidate has to undergo two years of study in Physics, Chemistry and Biology for issuance of eligibility certificate. For the benefit of quick reference, the contents of the said communication are being extracted hereinbelow:-

“Madam,

With reference to your application received by the Council office dated 15.02.2010, on the subject noted above, I am to inform you that you have studied Biology (Zoology & Botany) subject as additional subject after passing your 12th Qualification. As per the Regulations of the Council on Graduate Medical Education, 1997 the candidate has to undergo two years of study in Physics, Chemistry and Biology for issuing of Eligibility Certificate. Accordingly, you are not eligible for Eligibility Certificate and your application for eligibility is rejected.”

10. The real controversy, involved in the case, lies here. According to the Medical Council of India, as communicated in the letter, dated 23.08.2011, a candidate must have undergone two years of study in Physics, Chemistry and Biology at +2 issuing a

eligibility certificate under Section 13(4B) of the Indian Medical Council Act, 1956, whereas it is the case of the appellant that she, having passed Intermediate examination in Physics, Chemistry and Mathematics after completion of two academic years and, subsequently one year in the subject Biology in accordance with Regulation 13 of the Bihar Intermediate Education Council, she possessed the requisite qualification prescribed by the Medical Council of India in Regulation 4(2) of the “Regulations on Graduate Medical Education, 1997.” Regulation 4(2) of the said Regulations prescribes the qualification for admission to MBBS course which reads thus:-

“4(2). He/She has passed qualifying examination as under:-

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology/Bio-technology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years education structure as recommended by the National Committee on Education;

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical Colleges;

Or

(b) The intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology/Bio-technology which shall include a practical test in these subjects and also English as a compulsory subject.”

x x x
x x x

Or

(f) Any other examination which, in scope and

standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology /Bio-technology including practical test in each of these subjects and English.”

11. Before we proceed further, we find from a bare reading of Clause 4(2) that there are six alternative qualifications prescribed for admission to MBBS course. Clause 4(2) (a) prescribes that a candidate should have passed Higher Secondary Examination or Indian School Certificate Examination, which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years of study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Education Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education. By way of note, beneath the said prescribed qualification, it has been added that where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical Colleges.

12. *Alternatively*, as prescribed in Clause 4 (2) (b), a candidate should have passed the Intermediate examination in Science of an Indian University/Board or other recognized



examining body with Physics, Chemistry and Biology/Bio-technology, which shall include practical tests in these subjects and also English as a compulsory subject. The word “or” occurring between 4(2) (a) and 4(2) (b) is apparently disjunctive in nature as is evident from language and no other meaning can be given to it in the context in which the word ‘or’ has been used. A candidate, thus, in order to qualify for admission to MBBS course, is required to pass examination prescribed either in 4(2) (a) or 4(2) (b) or either of the other examination(s) as mentioned in 4(2)(c), 4 (2)(d), 4(2)(e) and 4(2) (f).

13. After having received the communication, dated 23.08.2011, the appellant filed subsequent representations, dated 17.09.2012 and 24.09.2013, to the Medical Council of India, relying on the Regulations of the Bihar Intermediate Education Council, in order to show that she had studied Biology as a regular student in terms of Regulation 13 of the Regulations framed by the Bihar Intermediate Education Council in this regard. Both the representations came to be rejected by the Medical Council of India through the communications, dated 18.02.2013 and 07.03.2014.

14. Refusal by the Medical Council of India to grant eligibility certificate comes in the way of the appellant in appearing

in the screening test as required under Sub-Section (4A) of Section 13 the Act, for the purpose of recognition of the medical qualification obtained by her from a Medical Institution of a country, situated outside India, for her enrolment as a medical practitioner in India.

15. Sub-Sections (4A) and (4B) of Section 13 of the Act are relevant for the present case and, for the benefit of quick reference, are being reproduced hereinbelow:-

“(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 recognized 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 or admission to any medical course for recognized 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.”

16. So far as the factual aspects, as mentioned above, are concerned, there is no dispute. Aggrieved by the said communication, dated 23.08.2011, of the Medical Council of India, the appellant approached this Court by filing an application under Article 226 of the Constitution of India, giving rise to CWJC No. 20894 of 2014. She sought for quashing of the said communication and a direction to the Medical Council of India to grant eligibility certificate as required under Sub-Section (4B) of the Act. Learned single Judge, however, dismissed the application, relying upon a Division Bench decision of Delhi High Court, dated 31.05.2007, in case of ***Raghukul Tilak Vs. Union of India & Ors.*** rendered in LPA No. 2033 of 2006, holding that the requirement of two years of study and practical training in Biology was must for being eligible to seek admission to MBBS course and passing in Biology subject as an additional paper cannot dilute the requirement of the statute provided by the Medical Council of



India under the Indian Medical Council Act, 1956. A petition filed, under Article 136 of the Constitution of India, against the said Division Bench decision of the Delhi High Court, has, admittedly, been dismissed in *limine* by Supreme Court by an order, dated 17.08.2007, passed in Special Leave to Appeal (Civil) No. 13571 of 2007.

17. Mr. Rama Kant Sharma, learned Senior Counsel, appearing on behalf of the appellant, has contended, referring to Clause 8 of “The Eligibility Requirement For Taking Admission in an Undergraduate Medical Course, in a Foreign Medical Institution Regulations, 2002,” that there is no provision, under the said Regulation requiring study of, at least, two years in Physics, Chemistry and Biology for taking admission in Undergraduate Medical Course in a Foreign Medical College. He has argued that the Medical Council of India, while considering the application for eligibility certificate, is required to verify, *inter alia*, the fact as to whether the candidate fulfills the eligibility criteria for admission to MBBS course in India as prescribed in Graduate Medical Education Regulations, 1997. Regulation 8 of the said Regulations, being relevant, is being reproduced hereinbelow:-

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

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

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

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

18. Mr. Ramakant Sharma, learned Senior Counsel, has, accordingly, taken us through Regulation 4(2) (B) of the Regulations on Graduate Medical Education, 1997, as quoted above, which lays down that passing of an Intermediate examination in Science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology, which shall include a practical test in these subjects and also English as a compulsory subject, is a valid qualification for admission to MBBS course in Medical Institution in India. He has submitted, accordingly, that the appellant certainly possesses certificates of passing Intermediate examination in the subjects Physics, Chemistry and Biology issued by the Bihar Intermediate Education Council, which is competent Board and recognized body to issue such certificate. He has also submitted that the appellant acquired the qualification in Biology, after pursuing regular course for one year, focused on the subject Biology after having completed two years course in Physics, Chemistry and



Mathematics. In order to distinguish the case of the appellant from the case of ***Raghukul Tilak*** (supra), Mr. Sharma, has submitted, firstly, that whereas in the present case, the appellant had taken re-admission after having passed the Intermediate Examination to pursue one year course in Biology, that was not the case before Delhi High Court in case of ***Raghukul Tilak*** (supra). He has argued that the appellant, in the present case, did not appear in the Intermediate examination in the subject Biology as a private student; rather, as a regular student. He has accordingly submitted that the decision of the Delhi High Court, in Rubab Vs. Medical Council of India, rendered in WP (C) No. 2985 of 2008, dated 05.11.2008, which has been relied upon by the Respondents, has also no application in the present facts and circumstances of the case, which has simply followed its earlier decision in ***Raghukul Tilak*** (supra).

19. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the Medical Council of India, has heavily relied on Rule 11 of Bihar Intermediate Education Council (Establishment of Colleges and Conduct of Examination) Rules, 1994, which has been quoted hereinabove, in order to submit that the said rule contemplates that courses of study for Intermediate+ 2 class shall be prescribed by the Council on the recommendation of the Course of *Study Committee*.

According to him, since sub-Rule (2) of Rule 11 prescribes that the courses shall be of two academic years' duration, the appellant cannot be said to have acquired qualification of passing of Intermediate (+2) examination in the subject Biology since she pursued the said subject only for one year.

In order to buttress his contention, Mr. Ramakant Sharma, learned Senior Counsel, has referred to Supreme Court's decision in the case of *Rajendra Prasad Mathur Vs. Karnataka University and another* reported in *1986 supp SCC 740*. He has submitted that the Supreme Court, in case of *Rajendra Prasad Mathur* (supra), had held higher secondary examination in the State of Rajasthan, which required only 11 years of schooling and, thereafter, passing of first year examination of three year B.Sc. degree course of University of Rajasthan, as not equivalent to 'two years' pre-University Examination of pre-University Education Board, Bangalore, for the purpose of admission to Engineering degree course of Kanataka University.

20. According to him, the Regulation 13 of the Regulations framed by the Bihar Intermediate Education Council permitting a candidate to acquire intermediate level qualification in one subject on pursuing one year, after having passed two years Intermediate Course, is in conflict with Rule 11 of Bihar

Intermediate Education Council Rules. According to him, Rule 11 of the Bihar Intermediate Education Council Rules does not permit the Council to provide for any course other than two years Intermediate Course.

21. Mr. Giri, learned Senior Counsel, has also relied the said judgment and order, dated 29.09.2006, rendered by learned single Judge in case of **Raghukul Tilak** (supra), which subsequently came to be upheld by Division Bench of Delhi High Court in its judgment and order, dated 30.05.2007, in LPA No. 2033 of 2006. He contends that Special Leave Petition preferred against the Division Bench decision of Delhi High Court came to be dismissed by Supreme Court by an order, dated 17.08.2008 passed in SLP (C) No. 13571 of 2007. He has further contended that the decision, in case of **Raghukul Tilak** (supra), has been subsequently followed by Delhi High Court in its judgment, dated 05.11.2008, in case of **Rubab Vs Medical Council of India**. Accordingly, in terms of the mandatory and binding regulations of Medical Council of India, the appellant was not eligible for admission in MBBS Course in the country or in any Foreign Country and, therefore, the Medical Council of India rightly rejected the appellant's representation for grant of eligibility certificate, he argues. According to him, the order under appeal,

passed by the learned single Judge, does not require any interference by this Court.

22. On the basis of the pleadings on record and rival submissions made on behalf of the parties, the issues, which have emerged for determination in the present appeal can be summarized as under:-

Is it essential for a candidate to have undergone two years of study, simultaneously in the subjects Physics, Chemistry and Biology at Intermediate/+2 level in order to acquire eligibility for admission to MBBS course in Medical Colleges in India, as contemplated under Regulation 4(2) of the “Regulations on Graduate Medical Education, 1979” as noted above? In the present case, the moot question is as to whether a candidate is disqualified from being admitted to MBBS course under the said Regulations on the ground that the Regulation 4(2)(e) of the same provides for two years course in Physics, Chemistry and Biology, whereas the appellant pursued her one year course as regular student, in Biology, to secure certificate of passing Intermediate course in the said subject, after having passed the two years course in the subjects Physics, Chemistry and Mathematics? Last but not the least, was it not mandatory for the Medical Council of India to have considered the Regulations framed under the Indian Medical

Council Act and the Regulations of Bihar Intermediate Council making provisions for one year course in one subject, viz, Biology in the present case (Regulation 13 as quoted above), before issuance of the impugned communication, rejecting the appellant's request to issue eligibility certificate?

23. In our view, the Supreme Court's decision in ***Rajendra Prasad Mathur*** (supra), is distinguishable on facts. In the said case, the matter related to admission to first year of Engineering Degree Course in an affiliated Private College, for which it was the condition of the eligibility that the candidates should have passed the "two years pre-University examination of the pre-University Education Board, Bangalore, or an examination held by any other Board or University recognized as equivalent to it". The appellants, in ***Rajendra Prasad Mathur*** (supra), had passed Higher Secondary Certificate Examination, which was equivalent to 11 years schooling. They had, thereafter, passed first year B.Sc. examination of Rajasthan University. In these circumstances, the Supreme Court upheld the decision of Karnataka University that the candidates were ineligible for admission to the Engineering Course and held in paragraph 7 as follows:-

"7. But it was then contended on behalf of the appellants as a last alternative that the action of the



Karnataka University in not recognising the Higher Secondary Examination held by the Secondary Education Board, Rajasthan and in any event the first year BSc examination of the Rajasthan and Udaipur Universities as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore was arbitrary and unreasonable. We cannot accede to this contention. It is difficult to appreciate how the Higher Secondary Examination held by the Secondary Education Board, Rajasthan after only 11 years' schooling could be regarded as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore which came as the culmination of a full 12 years' course of study. So also it is difficult to understand how the decision of the Karnataka University not to recognise the first year BSc examination of the Rajasthan and Udaipur Universities as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore could be regarded as arbitrary or fanciful. It is for each University to decide the question of equivalence and it would not be right for the Court to sit in judgment over the decision of the University because it is not a matter on which the Court possesses any expertise. The University is best fitted to decide whether any examination held by a University outside the State is equivalent to an examination held within the State having regard to the courses, the syllabus, the quality of teaching or instruction and the standard of examination. It is an academic question in which the Court should not disturb the decision taken by the University. Here we find that no material has been placed before the Court on the basis of which the Court could say that the decision of the Karnataka University not to recognise the Higher Secondary Examination of the State of Rajasthan or the first year BSc examination of the Universities of Rajasthan and Udaipur as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore was arbitrary or not based on reasons. We must therefore reject this contention urged on behalf of the appellants."

24. Unlike the case of **Rajendra Prasad Mathur** (supra), the Medical Council of India has laid down, in the present case, alternative conditions of eligibility under Regulation 4(2) of the



Regulations as quoted and discussed hereinabove, which includes passing of Intermediate Examination in Science of an Indian University/Board or other recognized body, Physics, Chemistry, Biology/ Bio Chemistry. There is another alternative qualification at clause (f) under Regulation 4(2) of the Regulations according to which, a candidate, who has passed an examination of which, the scope and standard is found to be Intermediate Science Examination of an Indian University/Board taking Physics, Chemistry and Biology including practical test, is eligible for admission to MBBS course. Whereas at (a) Regulation 4(2), 12 years of study is specifically provided, there is no such prescription at (b) and (f). For this purpose, we need to closely examine Regulation 4 (2) of the Regulations on Graduate Medical Education, 1997. We have already extracted Regulation 4(2) in the foregoing paragraphs, which prescribes alternative conditions of eligibility for admission to MBBS course.

25. The word '*or*', occurring in Regulation 4 (2) of the Regulations on Graduate Medical Education, 1997, is of seminal significance for determining the controversy involved in the present matter and for answering the issues, so formulated by us as noted above. Upon reading of Regulation 4 (2) of the said Regulations, we find that six alternative qualifications have been



prescribed, either of which makes a candidate eligible to seek admission in MBBS course. The alternative qualifications have been prescribed as Regulation 4 (2) (a) or (b) or (c) or (d) or (e) or (f) of the said Regulations. What we have noticed from the judgment and order, under appeal, is that the learned single Judge has quoted Regulation 4 (2) of the said Regulations, but has omitted to take note of the word 'or' occurring between Regulation 4 (2) (a) and (b) of the said Regulations and relying upon the decision of Delhi High Court, in case of **Raghukul Tilak** (supra), the learned single Judge has, by the judgment and order, under appeal, rejected the plea raised on behalf of the appellant that she fulfilled requisite criteria prescribed under Regulation 4 (2) (b) of the said Regulations.

26. Upon careful reading of Regulation 4 (2) of the said Regulations, we find ostensible distinction between the qualification prescribed under Regulation 4 (2) (a) and 4 (2) (b) of the Regulations. For a candidate to be eligible for admission to MBBS course, under Regulation 4 (2) (a) of the said Regulations, he/she is required to have passed Higher Secondary Examination or Indian School Certificate Examination, which is equivalent to 10+2 Higher Secondary Examination after a period of twelve years, the last two years of study comprising of Physics,



Chemistry, Biology/Bio-technology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training, after the introduction of the 10+2+3 years education structure, as recommended by the National Committee on Education. The *note* beneath it contemplates a situation, where the course content is not as prescribed for 10+2 education structure of the National Committee, in which situation, a candidate is required to have undergone a period of one year pro-professional training before admission to Medical Colleges. Whereas in Regulation 4(2)(a), passing of Higher Secondary Examination/ Indian School Certificate Examination after a period of twelve years of study, the “last two-years of study”, comprising Physics, Chemistry and Biology/Bio-technology, has been prescribed as the eligibility qualification, no such period has been mentioned under Regulation 4 (2) (b) of the said Regulations in relation to Intermediate examination in Science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology/Bio-technology. The qualification, prescribed under Regulation 4 (2) (b) of the said Regulations, is certainly alternative to the qualification as prescribed under Regulation 4 (2) (a) of the Regulations.



27. It is a fundamental principle of statutory interpretation that a language of the statute should be read as it is and the intention of the legislature is to be gathered from the language used. It essentially means that a Court, while interpreting statutory provision, is required to pay due attention to what has been said in a Statute and what has not been said. Meaning thereby that a construction of a Statute, which requires addition, substitution or avoidance of a word, should, ordinarily, be not resorted to.

28. What we find in Regulation 4 (2) of the said Regulations is that there is intentional omission of “last two-years of study”, in Regulation 4 (2) (b) of the Regulations, which expression is there in Regulation 4 (2) (a) of the Regulations. The requirement of qualifying qualification, under Regulation 4 (2) (b) of the Regulations, is that a candidate should have passed Intermediate examination in Science of an Indian University/Board or other recognized examining body. No dispute has been raised by the respondents, Medical Council of India, that Bihar Intermediate Education Council is a recognized examining body. It is not the claim of the appellant that she has passed Higher Secondary Examination or the Indian School Certificate Examination. It is her case that she has passed Intermediate Examination in Science from a recognized examining body, i.e.,



Bihar Intermediate Education Council. No plea has been taken by the Medical Council of India in its counter affidavit that the Bihar Intermediate Education Council did not have the authority to issue certificate as has been issued in favour of the appellant of having passed Intermediate examination in subjects Physics, Chemistry and Biology. If the Medical Council of India was of the view that the Bihar Intermediate Education Council could not have held examination in one subject, i.e., Biology, for such candidates, who had already passed Intermediate examination in accordance with Regulation 13 of the Regulations framed by the Bihar Intermediate Education Council, the matter would have been different. We do not find any reason assigned in the impugned communications, rejecting the request of the appellant, as to how the qualification acquired by the appellant, in terms of Regulation 13 of the Bihar Intermediate Education Council, could not be said to be a valid qualification for admission to a MBBS course. The reason, which has been assigned in the communication, is that as per the Regulations of Medical Council of India on Graduate Medical Education, 1997, a candidate has to undergo two-years of study in subjects Physics, Chemistry and Biology for issuing eligibility certificate. What we find is that the Medical Council of India, while rejecting the request made by the appellant, has completely

ignored Regulation 13 of the Regulations framed by the Bihar Intermediate Education Council, as noted above.

29. As has been pointed out above, the appellant, after having pursued her Intermediate course in subjects Physics, Chemistry and Mathematics and having passed the examination, opted to pursue the course of “Intermediate in Biology” as a regular student after having taken re-admission in the College. No dispute has been raised that the curriculum of one-year course in Biology, as permitted by the Bihar Intermediate Education Council, lacks in standard and inferior to the case prescribed for two-years course in subjects Physics, Chemistry and Biology. The courses of study for Intermediate examination (Science), prescribed by the Bihar Intermediate Education Council, has been produced before us. No different syllabus has been prescribed for one-year course of Biology than what has been prescribed for students pursuing two years course in the subjects Physics, Chemistry and Biology. No dispute has been raised by the Medical Council of India on this aspect.

30. In our view, thus, the decision of the Medical Council of India, refusing to grant eligibility certificate to the appellant on the ground that a candidate has to undergo “two-years of study in Physics, Chemistry and Biology” as mandatory for issuing of



eligibility certificate, cannot be sustained inasmuch as the Medical Council of India has not considered the case of the appellant with reference to Regulation 4 (2) (b) and 4(2) (f) of the Regulations of the Council on Graduate Medical Education, 1997, and Regulation 13 of the Regulations for Intermediate examination, framed by the Bihar Intermediate Education Council, Patna.

31. We are of the further view that the decision of the Delhi High Court, in case of ***Raghukul Tilak*** (supra), is distinguishable on facts of the present case. That was a case, where the candidate had pursued his course as a private student. Subsequently, in case of ***Rubab*** (supra), the Delhi High Court took the same view answering specific question as to whether a student, who had studied Biology as a private student and not as a regular student, is eligible to undergo to under graduate course in Medicine. The said decisions of the Delhi High Court are of no help to the Medical Council of India in the facts of the present case.

32. The plea, taken by Mr. Giri, learned Senior Counsel, that Regulation 13 of the Regulations of the Council on Graduate Medical Education, 1996, being in conflict with Rule 11 of the Bihar Intermediate Education Council (Establishment of Colleges and Conduct of Examination) Rules, 1994, and,



therefore, the claim of the appellant having condition of eligibility for admission to MBBS course cannot be accepted at this stage for more than one reasons. There is no such mention in the impugned order passed by the Medical Council of India rejecting the appellant's claim. Secondly, there is no pleading on record that the said qualification acquired by the appellant being in conflict with Rule 11 of the Bihar Intermediate Education Council of India, the Medical Counsel of India rejected the appellant's claim. Thirdly, as is evident from the decision of Medical Council of India, it appears to be based on the sole reasoning that the appellant did not fulfill the conditions of eligibility as prescribed under Regulation 4(2) (a) of the Regulations of the Council on Graduate Medical Education, 1996.

33. In view of the above, we set-aside the communication, dated 23.08.2011 (Annexure-5 of the writ application) and subsequent communications, dated 18.02.2013 and 07.03.2014, issued by the Medical Council of India, rejecting the appellants' request to grant eligibility certificate.

34. We direct the Secretary, Medical Council of India, to pass an order afresh, on the request made by the appellant for grant of eligibility certificate, taking into account the provisions contained in Regulation 4 (2) (b) of the Regulations on Graduate

Medical Education, 1997, and Regulation 13 of the Regulations for Intermediate examination of the Bihar Intermediate Education Council, Patna, with particular reference to the fact that the appellant had not pursued her course in Biology as a private student, rather, as a regular student after having obtained Intermediate certificate in subjects Physics, Chemistry and Mathematics. The decision must be taken within a period of two months from the date of receipt/production of a copy of this judgment.

35. The judgment and order, under appeal, dated 26.03.2015, passed by the learned single Judge, in C.W.J.C. No.20894 of 2014, is hereby set-aside. C.W.J.C. No.20894 of 2014 (Aiman Kamal Vs. The Medical Council of India & Ors.) Stands allowed.

36. This appeal is, accordingly, allowed to the extent aforesaid.

37. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I.A. Ansari, CJ. : I agree.

(I.A. Ansari, CJ.)

ArunKumar/-

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