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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5577/2015**

INDIAN OPTOMETRY FEDERATION Petitioner
Through Mr Umesh Sharma, Advocate.

versus

GOVERNMENT OF INDIA Respondent
Through Mr Arun Bhardwaj, CGSC with
Mr Sushil K. Pandey, Advocates.
Mr Ripu Daman Bhardwaj, CGSC with
Mr T.P.Singh, Advocate for R1/UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **29.11.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“A. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction in favour of the petitioner and against the respondent thereby directing the respondent to restore the duty chart of the Optometrists issued in 1978 under the National Program for Control of Blindness in India and grant the status of an independent medical stream for Optometry by constituting an independent council of optometry for regulating eye care and treatment in India.

B. Writ, order or direction in the nature of **MANDAMUS** or any other appropriate writ, order or direction in favour of the petitioner and against the respondent thereby restraining the respondent from placing the Optometry in the Board of Allied Medical sciences as being contemplated by the said

respondent.

C. Writ, order or direction in the nature of MANDAMUS or any other appropriate writ, order or direction in favour of the petitioner and against the respondent thereby directing strict criminal and penal action against the deployment of untrained, unqualified manpower by various NGOs, training hospitals, private retail optical chains, and companies to treat patients posing as Vision Technicians, Eye Mitra, Refractionists and such other misleading names.”

2. Insofar as the question whether any direction can be issued to restore the Duty Chart issued in the year 1978 is concerned, the said question was considered by this Court in ***National Ophthalmic Association v. Union of India & Anr. : W.P. (C) 9536/2017*** decided on **30.10.2017**. This Court had noted that respondent had issued an order dated 27.09.2017 specifying the duties of various Para-Medical Ophthalmic Assistants (hereafter PMOAs) under national program for Control of Blindness & Visual Impairment and the discretion of the respondent (which is in a position of employer) to set down the manner in which its employees perform their function could not be subject to judicial review. This Court had further noted that the recourse under Article 226 of the Constitution of India would not be available unless it is established that the decision of the concerned authority is contrary to law or is otherwise capricious or fails the *Wednesbury test* of reasonableness. Further, this Court did not find that there was any legal right with PMOA's to determine the duties to be performed by them and thus no directions as to the Duty Chart could be issued.

3. In the present petition, the learned counsel for the petitioner has also sought liberty that an independent medical stream of Optometry be recognised and an independent council of optometry be created for

regulating eye care treatment in India. The prayers made by the petitioners are purely in the legislative realm and no direction to the respondent to recognise an independent medical stream for Optometry by constituting an independent council of optometry can be issued. It would, of course, be open for the petitioner to make an appropriate representation to the respondent in this regard and it would be within the discretion of the respondent to consider the same.

4. The counter affidavit filed on behalf of the respondent also indicates that there is a proposal to set up an “Allied and Healthcare Professionals' Central Council”. This Court is informed that a bill in this regard has already been placed before the Parliament. Be that as it may, this Court is of the confirmed view that no Mandamus in this regard can be issued to the respondent.

5. Insofar as other prayers are concerned, the learned counsel for the petitioner seeks to withdraw the same with liberty to move an appropriate Public Interest Litigation as he states that he would like to agitate the same by way of Public Interest Litigation. Accordingly, the said prayers are dismissed as withdrawn.

6. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 29, 2017

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