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

Reserved on: 30.07.2018

Pronounced on: 17.08.2018

+ **W.P.(C) 6773/2018 & CM APPL. 25697-98/2018, 28282/2018,
28287-88/2018 & 29674-75/2018**

TANISHQ GANGWAR & ORS

..... Petitioners

Through: Mr. Avijit Mani Tripathi, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with
Ms. Gauraan and Mr. Nikhil Bhardwaj, Advocates
for UOI.

Mr. Vikas Singh, Sr. Advocate with Mr. T.
Singhdev, Ms. Amandeep Kaur and Ms. Puja
Sarkar, Advocates for R-2.

Mr. Amit Bansal and Ms. Seema Dolo, Advocates
for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

JUSTICE S. RAVINDRA BHAT

1. In these writ proceedings, the Petitioners challenge the constitutional validity of the Regulations on Graduate Medical Education (Amendment),

2018 (“impugned amendment” hereafter) issued by notification dated 22.01.2018 by the Medical Council of India (“MCI” hereafter) with the previous approval of the Central Government (hereafter “UOI”) as far as it prescribes that candidates who have cleared Biology/Biotechnology as an additional subject at 10+2 level after completing 10+2 without Biology/Biotechnology as a subject.

2. The impugned Regulations debarred all candidates who have passed 10+2 level with Biology/Biotechnology as an additional subject whether simultaneously or subsequently at 10+2 level. The Regulations were challenged by some students before this Court by W.P.(C) No. 1917 of 2018. During the course of hearing, the MCI, without further amending the impugned Regulations issued a clarification that the impugned Regulations does not apply to students who have studied biology/biotechnology as an additional subject simultaneously with other subjects at 10+2 level, however would debar students who had studied biology/biotechnology as additional subject subsequent of passing 10+2 without these subjects. The MCI, by way of clarification in the Court modified an existing statutory provision, without any formal amendment. The petitioners complain that this has resulted in creation of an artificial and arbitrary sub-classification amongst similarly placed categories of persons who had studied biology as an 'additional subject' at 10+2 level. The court had disposed of W.P.No.1917/2018 without considering whether the impugned regulations of MCI, in respect of petitioners and similarly placed persons who have passed biology/biotechnology as additional subject subsequent of passing 10+2 without these subjects was legal and valid.

3. The relevant facts, briefly are that all the petitioners are all students with Biology/biotechnology as additional subjects. The MCI, in 1997 with previous permission of the UOI framed the Regulation on Graduate Medical Education, 1997 (GME). With respect to the eligibility criteria for taking admission to MBBS course, the Regulations provided for passing of Biology/Biotechnology as a subject at 10+2 level. On 21.12.2010, MCI framed Regulations on Graduate Medical Education (Amendment), 2010 to enabling of the NEET examination for admission to all medical colleges. The initial Regulation with respect to eligibility *inter alia* provided that the candidate had to pass a 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/Biotechnology 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 educational structure as recommended by the National Committee on education. On 27.02.2012 MCI amended the norms through the Regulations on Graduate Medical Education (Amendment), 2012 bringing into force the 2010 Regulations prescribing for conduct of NEET and had appointed CBSE as the agency to conduct NEET. The eligibility criteria remained unchanged. On 23.10.2012, the MCI further amended the Regulation to give the CBSE the superintendence and control of NEET-UG Examination under the supervision of Central Ministry of Health and Family Welfare. This amendment too left the eligibility untouched. Later the same year, on 13.12.2012 pursuant to an order of the

Supreme Court dated 13.12.2012 passed in T.C.(C) No.101/2012, the Central Board of Secondary Education (CBSE) conducted the Common Entrance Test (NEET) in 2013, in which candidates who were

In *Christian Medical College Vellore & Ors v Union of India* reported in (2014) 2 SCC 305 set aside the MCI regulations providing the holding of Common Entrance Examinations (NEET). This judgment was vacated by a Constitution Bench in review proceeding, on 11.04.2016. After this development the MCI regulations providing for NEET were revived. In 2016, the admissions to MBBS Course took place through the NEET examination and the candidates. The petitioners allege that individuals similarly placed to them were eligible to participate in the NEET-2016 examination.

4. On 17.01.2017, the UOI by its letter instructed CBSE on conditions to be prescribed in the information bulletin for conduct of NEET-UG, 2017. There was no instruction debarring candidates who studied Biology/Biotechnology as additional subject. Later, on 29.03.2017, the General Body of the MCI in its meeting approved the draft amendment in the Graduate Medical Education Regulations, 1999 regarding eligibility criteria for appearing in NEET, which *inter alia* included a restriction that study of biology/ biotechnology as an additional subject at 10+2 level shall be not permissible. On 22.01.2018 MCI issued a notification with prior approval of Central Government amending Regulations on Graduate Medical Education, *inter alia*, prescribing that those studying biology/ biotechnology as an additional subject at 10+2 level was ineligible to participate in NEET. On 08.02.2018, CBSE published admission notice

2018 for holding of NEET (UG), 2018 for admission to all seats of MBBS/ BDS course. It in terms of the 2018 amendments, the admission notices of CBSE also declared candidates who passed 10+2 examination with Biology/Biotechnology as an additional subject were ineligible to participate in the test on 27.02.2018, some candidates approached this court in W.P.(C)No.1917/2018 challenging the impugned MCI Regulations to the extent they debar students who passed Biology/Biotechnology as additional subject at 10+2 level were rendered ineligible. On 28.02.2018, by an interim order permission was granted to fill forms for NEET-UG, 2018 by the court. On 12.04.2018, MCI issued a clarification on eligibility and conditions for different classes for candidates differentiating for the first time between those who had studied Biology/Biotechnology at 10+2 level as additional subject but simultaneously with other subjects and those who subsequently passed 10+2 without Biology/Biotechnology. The petitioners, in these circumstances, appeared in the NEET exam on 06.05.2018. On 11.05.2018, this court passed its common judgment quashing the impugned MCI Regulations to the extent it concerned students passing their 10+2 from Open School Boards or as private candidates; and upholding the provision relating to maximum age limit for appearing in NEET. However, in view of the clarifications issued by MCI on 12 April, 2018, the issue of legality of the Regulations impugned to the extent they debarred candidates who studied Biology/Biotechnology as additional subject after passing their 10+2 examinations without these subjects initially was not decided. The petitioners submit that with declaration of results, of the NEET-UG 2018 all of them cleared that examination and are thus qualified for admission to MBBS Course in India. Since many of them were denied admission at the

stage of counselling, on the ground of ineligibility, they have approached this court. In CM 29675/2018, the applicants, Govind Yadav, Ms. Kiran, Mahesh Ranwa and Harkesh Poonia seek identical directions as in the case of the petitioners; they wish to be impleaded and urge that they would adopt the arguments and contentions of the writ petitioners. Each of the applicants had applied and participated in NEET, and was allotted a seat in some medical college or the other (Govind Yadav and Savita Bhadu in RUHS medical college, Jaipur, Kiran and Mahesh Ranwa in SP Medical College, Bikaner; Harkesh Poonia in Geetanjali Medical College, Udaipur). They too were heard together with the writ petitioners.

5. Mr. Amarendra Sharan, learned senior counsel for the petitioners relied heavily on the previous judgment of this court in *Anshul Aggarwal* (supra) and argued that in the case of National Open School students, the candidates do not undergo a regular course of study, but rather have classroom learning for only 30 hours in an entire academic year with little or negligible exposure to practical tests. Despite this seeming inadequacy, the court ruled that exclusion of such NIOS students amounted to invidious discrimination and set aside to them to that extent.

6. It was submitted that there is no *rationale* in sub-categorizing similarly placed candidates who passed Biology/Biotechnology as 'additional subject' at 10+2 level on the basis of the fact as whether they passed it simultaneously with other subjects or subsequently completing it with other subjects. It is urged that before prohibiting candidates with Biology/Biotechnology as an additional subject, the MCI has not carried out any ground work of considering rules and procedures of different State

Boards regarding study of Biology/Biotechnology as an additional subject and a sweeping prohibition was affected without any application of mind. For example, in U.P. Board, the study of Biology/Biotechnology is not permitted simultaneously with Mathematics at 10+2 level and one has to study Biology/Biotechnology only after completing 10+2 with Mathematics as additional subject, it is permissible to study both Mathematics and Biology simultaneously at the level of class 11th the students attend regular classes and practicals throughout class 11th for one whole year. But, for class 12th Board Examinations, the student can opt either of Biology or Mathematics as their Main subject. If a candidate had opted for Mathematics as his/her main subject he/she has the option either to pass Biology as additional Subject in the same year or as a Main Subject in the next year after passing 10+2 with Mathematics. It is thus submitted that the impugned MCI Regulations did not envisage such a situation where the candidates study Biology for 2 years with theory and practical classes and it is only different from other permitted candidates that they pass Biology during a separate examination. Therefore, the impugned Regulations confer undue benefit on students from Boards which permit simultaneous study of Mathematics and Biology/Biotechnology at 10+2 level and discriminating students from Boards who do not permit the same, without any fault of the candidate.

7. It is urged that there is no *rationale* in excluding the candidates opting for biology/biotechnology as additional subject for taking NEET examination inasmuch as the candidate has passed in subjects necessary to study medicine and as such, there ought to be no impediment on pursuing

medicine course. The exclusion has no nexus with maintaining minimum standards of medical education which is the object sought to be achieved by way of the impugned Regulations. It is argued that the institutions of excellence in medical educations i.e. All India Institute of Medical Science (AIIMS), Jawahar Lal Institute of Postgraduate Medical Education and Research (JIPMER) do not have any such exclusion.

8. Learned counsel submits that the Petitioners have studied the same syllabus, undergone the same theory and practical examinations to pass Biology/Biotechnology at 10+2 level, subsequent to passing their 10+2 without Biology akin to candidates who have simultaneously studied Biology/Biotechnology either as core subject or as an additional subject at 10+2 level. The impugned Regulation of MCI is thus patently discriminatory. It is argued that an additional qualification cannot be taken as a disqualification. Furthermore, argued counsel, the impugned Regulations cannot take away vested rights of those who have already passed or taken admission in biology/biotechnology at 10+2 level as additional subject prior to notification of the impugned Regulations and there cannot be any retrospective application of a delegated legislation. Reliance is placed on *Mahabir Vegetable Oils Pvt. Ltd. v. State of Haryana* [2006] 3 SCC 620]. In this regard, it is also urged that the amendment to the Regulations is procedurally *ultra-vires* the Indian Medical Council Act, 1955 as it was not carried out in terms of Section 19A (2) of Indian Medical Council Act, 1956 which provides that the proposed amendment to the Regulation shall be circulated to all State Governments for their comments and after receipt of the comments from them, the draft regulation along with

comments of the State Government shall be placed before the Central Govt. for its prior approval. Learned senior counsel urged that the MCI has not provided any explanation to them is chief the impugned exclusion causes to students from States like Uttar Pradesh where, a student cannot opt for Biology/Biotechnology and Mathematics simultaneously and it has to opt for one of the subjects as additional subjects; or that of state of Rajasthan where a student is permitted to study both or either of the subjects of Biology/Biotechnology and Mathematics in class 11th and he/she cannot opt for any of the subjects in the 12th Board examinations irrespective of subjects of Class 11th. Such students who have studied Biology as regular students in class 11th and the after completing their class 12th without Biology have passed the same next year as regular students, also are debarred by impugned regulations, without any *rationale*, which establishes that the MCI did not carry out any study before framing the statutory regulations. It is argued in this context that if the statute prescribes the manner of doing a thing, it has to be done in the same manner and not otherwise; reliance is placed on *Sharma Transports v. State of Maharashtra* (2011) 8 SCC 647.

9. Mr. Sharan argued that candidates who had previously qualified have reattempted in the entrance exam for admission to better college, or for government colleges with lower fees which they could secure the previous year. These students have invested in education specifically directed towards the NEET examination and now are being restricted arbitrarily and contrary to principal of legitimate expectation. It is highlighted that a blanket

prohibition without any rational and without considering different rules and regulations made by different

Higher Secondary Boards of Education of the country is arbitrary and violative not only of Article 14 of the Constitution but also the petitioners' rights under Article 19(1)(g) for choice of profession and Article 21 insofar as it curtails on their choice of livelihood.

10. It is further submitted that impugned criteria of excluding candidates passed 10+2 with Biology/Biotechnology as additional subject for admission to medical courses has no *rationale* behind it which relates to maintenance of standards of medical education or that of deciding caliber or intelligence of students for such admissions. Therefore, the impugned Regulations fail to further the objective sought to be achieved by the parent Act and Regulations. Learned counsel contrasted Regulation 4 (2) (a) with its proviso- stressing on the necessity of continuous education in *all subjects*, on the one hand, and Regulation 4 (2) (b) on the other, highlighting that the latter or other sub clauses (c), (d) (e) or (f) do not insist upon such requirement. It is submitted therefore, that students falling in category covered by Regulation 4 (2) (a) are subjected to hostile discrimination and that prohibition from participating in NEET also amounts to impermissible over-classification and therefore, violates Article 14 of the Constitution of India.

11. Learned senior counsel for the petitioner lastly characterized the clarification issued by MCI on 12th April, 2018 as vitiated by utter non-application of mind. He highlighted that there is no distinction between students who fall in Sl. No 6 (i.e. those who cannot or do not appear in the

10+2 Board examination, and avail a break or a “gap” year, after completing their 11th standard examination in the school, but in the later year, appear in the 12 standard examinations- with Biology/Biotechnology as additional subjects) on the one hand, and the petitioners, covered by Sl. No 7; the latter too do not appear in the Biology/Biotechnology exams in the previous year, though they appear in the other subjects. Furthermore, learned counsel stressed that the previous judgment in *Anshul Aggarwal* (passages from which ruling, were heavily relied on during the hearing) has now concluded that even those who do not undertake traditional classroom learning and rather attend very few classes in the entire academic year, i.e. those opting for NIOS, have been permitted to appear in the NEET examination. Such being the case, MCI’s claims that continuous classroom education and appearing in simultaneous examination (in all subjects, including additional subjects) as essential, are without merit.

12. In its counter affidavit, the MCI stresses that *Anshul Aggarwal* dealt with other aspects, but did not disturb Regulation 4 (2) (a). It urges, and its senior counsel, Mr. Vikas Singh, highlights that Regulation 4(2)(a) as it provides that candidates should have undergone regular, co-terminus/simultaneous teaching and training in the subjects of Physics, Chemistry and Biology in his /her Higher Secondary Education (10+2) and last two years of study should comprise of the concerned mentioned subjects including practicals amounts to prescribing a standard deemed essential for students to secure admission to a medical seat. It was argued that the NEET is a uniform entrance examination and it helps the candidates in avoiding to appear in multiple entrance tests, entailing payment of fees for each entrance

tests separately and that the same will provide a level playing field since the standards of education upto senior secondary level, i.e. 10+2 examination, vary from region to region. Learned senior counsel argued that the underlying purpose or objective (of NEET) is to ensure candidates who are admitted to MBBS Course are suitable and possess the right aptitude so that they can be shaped well into the medical profession after due teaching and training. The National Eligibility-Cum-Entrance Test shall further ensure that only the deserving and suitable candidates are admitted in MBBS course in the medical colleges of the country.

13. Mr. Vikas Singh, learned senior counsel for MCI argued that the NEET system incorporated by the statutory regulations, standardizes the entry of candidates into the field of medical education so that only those with the right aptitude, proficiency and competence, who can undertake the course, gain entry. Relying on *State of Kerala Vs. T.P. Roshna* (1979) 1 SCC 572, it was submitted that the Indian Medical Council Act, 1956 and its regulation making powers are to prescribe minimum standards of medical education and to regulate their observance. He highlighted the observations of the Supreme Court that “*Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-standard entrance qualifications for medical courses....*” He also relied on the observations of the Supreme Court in *Medical Council of India v State of Karnataka* - (1998) 6 SCC 131,

with reference to medical courses and of the Constitution Bench of the Supreme Court in *Dr. Preeti Srivastava v State of M.P.* - (1999) 7 SCC 120.

14. It was submitted that *Preeti Srivastava* (supra) recognized that if the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken: and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the caliber of the students as on the caliber of the teachers and the students. Given the wide variables in learning content and students' aptitude and proficiency, prescribing continuous classroom cannot, submitted counsel, be characterized as unreasonable. As an expert body, MCI should be allowed the discretion and autonomy to frame appropriate regulations to test proficiency, having regard to a uniform standard of essential qualification. It was argued that the court should not delve too deep, given that these standards depended on expert evaluation of the various syllabi and content, in schools across the country.

15. Learned counsel urged the court not to rely on *Anshul Agarwal* (supra) stating that the said decision has been carried in appeal to the Supreme Court, by a petition for special leave. He argued that the *rationale* for the impugned qualification is found in the judgment reported as *Raghukul Tilak v Union of India* 2006 (92) DRJ 356, which the Division bench confirmed in *Raghukul Tilak v Union of India* AIR 2007 Del 237. It

was stated that a special leave petition impugning the judgment in that case, was rejected. Learned counsel submitted that though, in that case, the validity for the regulation was not involved, nevertheless, the *rationale* for such norms was discussed. In view of these circumstances, the learned senior counsel for MCI urged this court to desist from intervention in the present petition.

The amended – and impugned provisions

16. Section 10D of the Indian Medical Councils Act, 1956, which was introduced with effect from 2016 reads as follows:

“10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner: Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination”

The amended Regulation 4 (of the 1997 Regulations) read as follows:

"4. Admission to Medical course-Eligibility Criteria: No Candidate shall be allowed to be admitted to Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

(1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course."

"Provided further that in order to be eligible, the upper age limit for candidates appearing for National Eligibility Entrance Test and seeking admission to MBBS programme shall be 25 years as on the date of examination with a relaxation of 5 years for candidates belonging to SC/ST/OBC category and person entitled to reservation under the Rights of Persons with Disabilities Act, 2016:"

"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/Biotechnology and Mathematics or any other elective subjects with English at a level not less than core course for English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education;

"Provided that two years of regular and continuous study of Physic, Chemistry, Biology/Biotechnology taken together shall be required at 10+2 level for all the candidates. Candidates who have passed 10+2 from Open Schools or as Private candidates shall not be eligible to appear for National Eligibility-cum-Entrance Test. Furthermore, study of

Biology/Biotechnology as an Additional Subject at 10+2 level also shall not permissible."

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/Biotechnology which shall include a practical test in these subjects and also English as a compulsory subject;

or

(c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology Biotechnology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/premedical examination shall include a practical test in Physics, Chemistry & Biology Biotechnology and also English as a compulsory subject.

or

(d) The first year of the three years degree course of a recognized university, with Physics, Chemistry and Biology Biotechnology including a practical test in three subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less than a core course.

or

(e) B.Sc examination of an Indian University, provided that he/she has passed the B.Sc examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology)/Bio-technology and further that he/she has passed the earlier qualifying examination with the following subjects- Physics, Chemistry, Biology and English.

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 Biotechnology including practical test in each of these subjects and English.

Note:

The pre-medical course may be conducted either at Medical College or a Science College.

Marks obtained in mathematics are not to be considered for admission to MBBS course.

After the 10+2 course is introduced, the integrated courses should be abolished."

(The amended portions, are highlighted in italics and emphasized in bold).

17. During the pendency of writ petitions in the *Anshul Agarwal* batch of cases, MCI issued a clarification, (more by way of “Frequently asked questions”), in a tabular manner. That tabular explanation is extracted below:

<i>S.No.</i>	<i>Particulars</i>	<i>Rationale/Status</i>
<i>1.</i>	<i>Candidate having qualified 10+2 examination, i.e. after 12 years of study, where the last two years of study comprise of Physics, Chemistry, Biology/Biotechnology and any other elective subject with English from a Recognized Board. Candidates must have regular, co-terminus, simultaneous teaching and training in the subjects of Physics, Chemistry and Biology in Class 11th and 12th along with practicals in Classroom mode in a Regular School.</i>	<i>Meets the test of regular and continuous two years of study of Physics/Chemistry/Biology or Biotechnology along with practicals taken together in Class 11th and 12th, hence Eligible.</i>
<i>2.</i>	<i>Candidates who have studied Biology/Biotechnology as 6th subject in Class 11th and 12th including practicals along with the other mandatory subjects with practicals in Classroom mode in a Regular School and possess a consolidated pass mark-sheet of Class 11th and 12th of a Recognized Board stating marks of all six subjects including Biology/Biotechnology.</i>	<i>Meets the test of regular and continuous two years of study of Physics/Chemistry, Biology or Biotechnology along with practicals taken together in Class 11th & 12th, hence Eligible.</i>

3.	<i>Candidates having studied Class 11th and 12th in Classroom Mode in a Regular School but have failed in a subject in class 12th for which he/she shall take the Compartment Examination from the Recognized Board to which the School is affiliated and successfully clears the Compartment Examination.</i>	<i>Meets the test of regular and continuous two years of study of Physics/Chemistry/Biology or Biotechnology along with practicals taken together in Class 11th and 12th, hence Eligible.</i>
4.	<i>Candidates studying in Classroom Mode in a Regular School but fails either in Class 11th and/or Class 12th shall reappear in Class 11th and/or Class 12th from a Recognized Board to which the School is affiliated and successfully clears Class 11th and/or Class 12th Examination. In cases where the Regular School issues Class 11th and/or Board issues Class 12th marksheet as failed and thereafter when the candidate reappears in Class 11th and/or Class 12th Examination and the Recognized Board treats as a Private Candidate.</i>	<i>Meets the test of regular and continuous two years of study of Physics/chemistry/Biology or Biotechnology along with practicals taken together in Class 11th and 12th, hence Eligible.</i> <i>However, the candidate would be require to place both the fail and pass marksheets of Class 11th and/or Class 12th before the Counselling Authorities.</i>
5.	<i>Candidates studying in Classroom Mode in a Regular</i>	<i>Meets the test of regular and continuous two years of</i>

	<i>School in Class 11th & Class 12th but re-appearing in examination for improvement of performance on account of various reasons and the Recognized Board treats him/her as a regular student.</i>	<i>study of Physics/chemistry/Biology or Biotechnology along with practicals taken together in Class 11th and 12th, hence Eligible.</i>
6.	<i>Candidates who have studied Class 11th with the requisite subjects/practicals in Classroom Mode in a Regular School but subsequently after gap year study Class 12th with the requisite subjects/practicals in Classroom Mode in a Regular School.</i>	<i>Meets the test of regular and continuous two years of study of Physics/Chemistry/Biology or Biotechnology along with practicals taken together in Class 11th and 12th, hence Eligible.</i>
7.	<i>Candidates who have studied 10+2 with Physics, Chemistry, Mathematics and after passing 10+2 have appeared with Biology/Biotechnology as an Additional Subject of the same Board in the</i>	<i>Do not meet the test of regular and continuous two years of study of Physics/chemistry/Biology or Biotechnology along with practicals taken together in class 11th and 12th, hence ineligible.</i>

18. Here, it would be useful to notice that the Division Bench, which examined the *vires* of the same impugned regulations (in *Anshul Agarwal*) and held that to the extent it excluded from participation those finishing from open school, was arbitrary. The Division Bench examined the records of the MCI, its decisions, as well as the file of the UOI. It held that:

“36. Ministry of Health and Family Welfare in their affidavit have stated that the MCI in response to the letter dated 1st February, 2018 had stated/informed vide letter dated 6th March, 2018 that the matter was sub- judice in the High Court. Ministry of Health and Family Welfare therefore in their affidavit are ambivalent and not categoric. They have referred to facts for consideration of the Court and have not proceeded to take a firm and decisive stand in the matter in the light of the letter dated 1st February, 2018 read with response of the MCI dated 6th March, 2018. The Ministry of Health and Family Welfare, who had earlier granted prior sanction on re- thought and deeper consideration, it is obvious, have reservation on the proviso to clause 4(2)(a) of the Regulations.

37. We have specifically referred to the prior sanction or approval granted by the Ministry of Health and Family Welfare, for we find that the said approval or sanction would falter and does not meet the mandate of law, as relevant and seminal aspect and issue, eligibility of students of Open School Board were never considered and examined. In fact, the letter dated 22nd January, 2018 should not have been issued after the question of eligibility of recognized open schools Boards students had arisen and was under debate and consideration pursuant to the meeting between the two Ministers on 17th January, 2018.

38. At this stage, we would like to note that both CBSE and Ministry of Human Resource Development, Union of India have supported the petitioners and are clearly opposed to the proviso disqualifying candidates, who have completed 10+2 from open schools. We begin by first referring to the affidavit of the CBSE on the said aspect, as in the counter affidavit, they have stated on oath in support of the writ petitioners as under:-

“5. That as regards the ineligibility of private candidates to sit for NEET is concerned, it is submitted that education is a part of the concurrent list of the Constitution of India and accordingly there are 02 types of Educational Boards across the country. The details are as follows:

a. National Boards: National Boards are CBSE, ICSE & NIOS. The CBSE and ICSE offers the education through Face to Face mode only. Further, NIOS is offering school education through Open and Distance Education Mode.

b. State Boards – There are following types of educations boards existing in the Country:

i School Education Board(s)

ii Open Schools like NIOS and

iii Other Boards like Sanskrit Board and Madarsa Board etc.

6. The National Institute of Open Schooling was established by Govt. of India in compliance of the recommendations made by National Policy on Education, 1986. Earlier, NIOS was known as NOS i.e. National Open School and later on its name was changed from National Open School to National Institute of Open Schooling. NIOS is a Pace Setting National Board, which is guiding the states for providing education through Open and Distance Education Mode to the youths who are from the disadvantageous category/position. It is also informed that National Open School was a part of CBSE till 1988 and after the recommendations of NPE, 1986 unit of CBSE of open school was given an

independent status in the form of National Open School. Both CBSE and NIOS are autonomous organizations of Ministry of Human Resources Development, Govt. of India.

7. As per the policy, the certificates issued by all the Boards for class X & class XII are treated at par for all purposes. A student who has done class X from CBSE may seek admission in National Institute of Open Schooling in class XII and the reverse is also possible. Likewise, any student who has passed class X from any State Board may seek admission in class XII in any of the 03 National Boards. Further, students can move from one State Board to another State Board also. All the Boards are allowed to issue the certificates to the students who have passed either class X or XII from their Boards. Students of any Board may also seek the admission in under graduate courses across the country. All the Boards are following the National Curriculum Framework, 2005 brought out by National Council for Education Research and Training (NCERT) and accordingly allowed to frame their own syllabus.”

*39. Ministry of Human Resource Development in their affidavit filed in Writ Petition (C) No. 2119/2018, **Shorya Raghav versus Union of India and Others**, are equally assertive on the equivalence of the 10+2 certification by approved open school Board and have stated as under:-*

“3. That it is submitted that, National Institute of Open Schooling (NIOS) originally formed by the Ministry of Human Resource Development (Department of Education), Government of India vide Resolution dated 21-11-1989 and it has been notified as such in the Gazette of India dated December 23, 1989, copy of the

Resolution is attached as Annexure R-1. That as per the above Notification, NIOS was called as The National Open School Society. However, thereafter, vide a Resolution dated 14-09-1990, Government of India ordered vesting of authority in the National Open School Society (NOS) for holding certain examinations through distance and open learning system at the school stage and for certification thereof. Accordingly, NIOS became a separate Board in the eyes of law. Presently NIOS's nomenclature has been changed to NIOS and it is an autonomous body under the MHRD having Regional Centres all over India.

4. That it is submitted that the answering respondent, Ministry of Human Resource Development has set up two National Boards, i.e., Central Board of Secondary Education (CBSE) and National Institute of Open Schooling (NIOS). MHRD has authorized the NIOS to conduct examination through distance and open learning system at school stage and issue certificate thereof. MHRD have conveyed to all the State/UT Governments that the students passing from NIOS are eligible for admission to higher studies and also for employment under the Central/State Governments.

5. That it is submitted that the Respondent No. 2 Medical Council of India (MCI), while amending their Regulations on Graduate Medical Education, 1997 vide Notification No. MCI-34 (41)/2017-Med./169873 dated 22.01.2018, have made the candidates, who have passed 10+2 from open Schools or as Private candidate, ineligible to appear for National Eligibility-cum-Entrance-Test from this year. As a result, the learners passing out from NIOS and 20 State Open School Boards

has become ineligible for MBBS/BDS Entrance Examination. The decision of the MCI is against the earlier decision of the Board of the Governors of MCI, taken in its meeting held on 13th August, 2012, as conveyed vide their letter No.MCI34(1)/(UG)(Gen.)/2012-Med./129570 dated 14.09.2012, W.P. (C) No. 1813/2018+connected making the students appearing in 10+2 examination conducted by NIOS as eligible for admission to MBBS course.

6. That it is submitted that the Hon'ble Minister for MHRD, wrote a letter to the Hon'ble Minister of Health & Family Welfare seeking intervention in the matter to reconsider the matter so as to enable the students from NIOS and other State Open Schools eligible to appear in NEET examination from 2018 (Anexure-R-2).

7. That it is submitted that, in regard to candidates taking Biology/Bio-Technology as additional subjects in class 11th and 12th will not be eligible to appear in the NEET Examinations, this Ministry has no comments to offer as it is the domain of Respondent No. 1 Ministry of Health & Family Welfare, Govt. of India and Respondent No. 2."

43. The issue whether students, who clear class 12 from the recognized open school Boards were eligible and should be treated at par with candidates who have undergone regular schooling, it is apparent, had arisen earlier in 2012. MCI vide their letter dated 23rd February, 2012 to the NIOS had sought clarification on procedure adopted for conducting practical tests in Physics, Chemistry and Biology and whether NIOS students passing 10+2 had to undergo practical lessons and practical tests. NIOS had then responded vide communication dated 28th February, 2012 stating that the courses offered by

them were undertaken through study centres, that were schools affiliated to a recognized National and State Board. Such schools had laboratories in the desired subjects like, Physics, Chemistry and Biology. It was mandatory for the students undertaking the said courses to perform practicals at the study centres. Attendance in these classes was compulsory for every learner. Practical exams were also conducted as held by any formal board. NIOS was following National Curriculum Framework, 2005 for evaluating the learners. NIOS had an *et cetera* curriculum, as their exams were conducted for both 11th and 12th class courses. In formal Boards, exams were conducted for class 12th course only. It may be relevant to state here that a student/candidate cannot appear in 10+2 examination unless he has been enrolled for two years with the NIOS/open Boards. These aspects were again clarified by NIOS to MCI vide their communication dated 30th July, 2012. This letter by NIOS had affirmed that large number of candidates of NIOS were appearing in various competitive examinations, including admission in MBBS at national and State level and they were qualifying. Large number of such students were already studying in various medical colleges.

44. MCI vide communication/letter No.MCI-34 (1) (UG)(Gen.)/2012- Med/129570 dated 14th September, 2012, after making reference to earlier correspondence in the form of six letters starting from 4th January, 2012 till 27th August, 2012, had positively stated that the matter regarding their acceptance to NIOS certificate for evaluating eligibility of students seeking admission to MBBS course had been considered by the Board of Governors on 13th August, 2012 and it was resolved that since the Regulations i.e. Graduate Medical Education Regulations, 1997 “do not specify as to the qualification granted by particular Board will be recognized, therefore,.....eligibility criteria for admission to MBBS

course are fulfilled by the students appearing in 10+2 examination conducted by the National Institute of Open Schooling they may be considered for admission to MBBS course.” Aforesaid letter/communication affirms and accepts that students/candidates who had completed 10+2 from open school Boards were eligible.

45. The contention of the MCI that their earlier letter dated 14th September, 2012 was vague and ambiguous or was written under misapprehension is far-fetched and should be rejected. The letter dated 14th September, 2012 accepting the students of NIOS as eligible for NEET examination was issued after thorough examination and after detailed correspondence including the letters written by NIOS on the question of face-to-face learning, practicals and classes being held in the subjects, Physics, Chemistry and Biology. It was a conscious decision. The principle that estoppel does not apply to law, would not be of avail in so far as MCI had correctly and fairly interpreted the Regulation as they existed prior to enactment of the proviso under challenge.”

19. The MCI's stand is discernible from the following extracts of its counter affidavit:

“89. It is respectfully reiterated that candidates who have passed 10+2 examination after 12 years of study in the requisite subjects have put in sustained effort with teaching and training along with practicals in the concerned subjects during the last 2 years and when such candidates obtain the minimum percentage of marks as required under the Statutory Regulations, it is this standard of excellence which is sought for a highly technical/scientific course in medicine. There can be no comparison between candidates who have undergone teaching and training along with practicals in the concerned

subjects for two years prior to appearing in the 10+2 examination, whereafter through their diligence & hard work achieved the minimum percentage of marks as required under the Statutory Regulations and certain other candidates who will pass the subjects without having to sustain the pressure of attending a regular school along with the other subjects to qualify the concerned subject.

90. It is humbly reiterated that the Statutory Regulation seeks to obtain candidates for admission in MBBS course of a particular caliber, who shall be judged on the basis of their competence to score a requisite percentage of marks when he/she undergoes teaching and training along with practicals in the concerned subjects while attending a regular school thus obtaining a particular percentage of marks in the concerned subjects. On the other hand, in respect of candidates who did not undergo teaching and training along with practicals in the concerned subjects for two years prior to appearing in the 10+2 examination, there being no restriction on the manner of teaching and training along with practicals in the concerned subjects, shall make the object to the Statutory Regulations redundant as there will be no parameter to judge their level of competence at that stage. The caliber of the candidates who obtain admission in MBBS course shall determine the quality of teaching and training of MBBS students and the finally the quality of doctors who shall provide health care in the Country.

91. Such candidates who after completing 10+2 examination have taken the subject of Biology as an additional subject, cannot be said to have achieved the level of excellence as required under the Statutory Regulations, even though they might have obtained the requisite percentage.

96. It is also relevant to state that this Hon'ble Court vide its judgment dated 11.05.2018 had also upheld Regulation 4(2)(a) of the Regulations in as much as it provides for the candidates to have undergone regular, co-terminus / simultaneous teaching and training in the subjects of Physics, Chemistry and Biology in his/her Higher Secondary Education (10+2) and last two years of study should comprise of the above-mentioned subjects including practicals."

20. The proviso to Regulation 4 (2) (a) in this case emphasizes firstly, that the NEET aspirant should have undertaken "two years of regular and continuous study of Physic, Chemistry, Biology/Biotechnology taken together shall be required at 10+2". It secondly states that those finishing from Open schools and as private candidates are not eligible; third and lastly, it stipulates that "Furthermore, study of Biology/Biotechnology as an Additional Subject at 10+2 level also shall not permissible."

21. In *Mohit Kumar v Union of India* (WP (C) No. 1917/2018), decided by this court in the *Anshul Agarwal* batch of cases) the MCI had stressed the underlying reasons for the regulations, as follows:

"Such candidates who do not attend a regular school and simply appear in the 10+2 examination as a private candidate of a particular Board or who after completing 10+2

examination have taken the subject of Biology as an additional subject, cannot be said to have achieved the level of excellence as required under the Statutory Regulations, even though they might have obtained the requisite percentage. These candidates will also include persons who have completed 10+2 examination from National Institute of Open Schooling or from any other open schools. Hence, the Statutory Regulations, in

this regard do not make any distinction, in as much as, candidates who have completed

10+2 examination from National Institute of Open Schooling Or from any other open schools or candidates who have appeared in the 10+2 examination as a private candidate of particular Board or who have taken the subject of Biology as an additional subject, have all not undergone regular, co-terminus/ simultaneous teaching & training in the subjects of Physics, Chemistry and Biology in Higher Secondary Education (10+2) and last two years of study comprising of the above mentioned subjects including practicals.

54. It is further most respectfully submitted that even as per the unamended provisions of the Regulations on Graduate Medical Regulation, 1997, prior to the amendment notified vide Notification dated 22.01.2018, candidates who had completed 10+2 examination from National Institute of Open Schooling or from any other open schools or candidates who had appeared in the 10+2 examination as a private candidate of a particular Board or who had taken the subject of Biology as an additional subject, were ineligible to take admission in MBBS Course in the medical colleges within the Country as well as obtain an Eligibility Certificate to seek admission in a Foreign Medical Institute for the purpose of obtaining a primary medical qualification. The position in this regard had been affirmed through various authoritative pronouncements of this Hon'ble Court as well as other Hon'ble High Courts."

22. *Anshul Agarwal* has ruled that exclusion of open school and NIOS candidates is both discriminatory and arbitrary. Apart from the reasons discussed in that judgment, which squarely applies in the present cases, *a fortiori* given that all students would have undergone regular schooling for 12 years, but only appear in the additional biology subject in the later year,

the reasoning given by the court as to why the open school candidates should be permitted participation, apply. Here too, like in the case of open school candidates, the students undergo learning in class in a later year; they undoubtedly have to attend practicals. In any case, wherever there is doubt whether the schooling in any additional subjected takes place during the subsequent year or years, can be verified at an appropriate stage, maybe at the stage of counselling or admission.

23. This court is further of the opinion that the reliance placed on the single judge and Division Bench ruling in *Raghukul Tilak* does not help the MCI. The regulations were then silent; the MCI's action in refusing participation of similar candidates, was questioned. In the "no rule" period, it was the executive decision that was questioned. However, now the MCI has framed regulations that disqualify such candidates; this court has to examine the reasonableness of such regulations and how they further the larger objective of ensuring that those of a certain calibre are amongst candidates permitted admission. These issues concededly need elaborate consideration, rather than a positive assertion of executive discretion based on expert regulatory judgment. Such elaborate examination would necessarily involve, whether and if so, there are justifiable reasons to exclude such category of candidates from participating in NEET and gaining admissions; also whether such reasons are germane and reasonable.

24. A comparison of Regulation 4 (2) (a) with Regulation 4 (2) (b) would reveal that as the two categories: i.e. those appearing in the concerned State Board on the one hand (Reg. 4 (2) (b)) and CBSE or ICSE public examinations on the other (Reg. 4 (2) (b)) are treated at par. Yet, those

appearing in the state intermediate boards do not have to undergo the regular, continuous and simultaneous learning in school/class rooms, like in the case of CBSE/ICSE candidates;

- (1) Thus, a candidate appearing in an intermediate board examination with a set of subjects which does not include biology, can appear again in the subsequent examination, pass in that subject with the requisite qualifying marks; she or he would then be eligible;
- (2) The clarification issued in a tabular form, by the MCI (which was discussed in *Anshul Agarwal*) is silent on the class of candidates covered by Regulation 4 (2) (b). Thus, it is open to the students who appear in a “*Intermediate examination in science of an Indian University/Board*” to qualify in the relevant subjects, except biology, and then appear in that subject in the next year, to be eligible to appear in NEET. This means that the MCI’s position that all candidates should have undergone 2 years’ continuous schooling in the +2 stage (whether CBSE/ICSE/ intermediate boards etc) is inapplicable uniformly. Absolutely no *rationale* is provided for this asymmetry or inconsistency by the MCI, rendering proviso to Regulation 4 (2) (a) (to the extent it excludes those appearing in CBSE with Biology/biotechnology as additional subjects and qualifying in those subjects in a subsequent year, ineligible) arbitrary;
- (3) The only *rationale* discernible in the pleadings that were considered in the *Anshul Agarwal* batch of cases, for students appearing with biology as additional subjects, can be gathered from the following

extract of the affidavit of the Union Human Resource Development ministry, quoted in the judgment, which is extracted below:

“That it is submitted that, in regard to candidates taking Biology/Bio-Technology as additional subjects in class 11th and 12th will not be eligible to appear in the NEET Examinations, this Ministry has no comments to offer as it is the domain of Respondent No. 1 Ministry of Health & Family Welfare, Govt. of India and Respondent No. 2.”

There was no material disclosed by MCI to show the Ministry of Health & Family Welfare’s position, supporting the class of students and candidates, represented in this writ petition.

(4) The MCI’s position that those appearing in additional subjects are *disqualified and ineligible* from NEET participation is on an assumption that those who offer the relevant subjects (biology/biotechnology) as *additional subjects* do not undergo classroom learning. There is no underlying basis in the form of empirical material, or in the form of analysis of various state boards curricula, or syllabi, or even the examination regulations, to support this assumption.

(5) A comparison of category (3), (4) and (6) in the tabular chart issued by the MCI on the one hand with category (7) on the other would reveal that there is no consistency *internally* in the MCI’s interpretation of Regulation 4 (2) (a). On the one hand, in the first two classes (Sl. Nos 3 and 4) the clarification covers those who appear in compartment or supplementary examinations to improve their performance, or those who fail in either in class XI or Class XII, but

later qualify in the concerned examination board, the students are deemed eligible; the third class (Sl. No. 6) covers those who appear in the examination after a “gap” year. On the other hand, in Sl. No. 7 (which covers the present petitioners) the “gap” is only in respect of the additional subject. There is consequently, no consistent pattern in the manner of exclusion of such artificially categorized candidates. The glaring and stark arbitrariness in the MCI’s interpretation is facially evident, because in Sl. No. 3, the candidate might have failed in biology or biotechnology- a performance which he might repeat. In such case, he would get the benefit of both Sl. No 3 and 4. Equally, the subject in which the candidate *fails might also be the same (biology) etc, in the Board examination*. Yet, the candidate is deemed eligible to appear in NEET. This amounts to treating those within the same class of candidates in a discriminatory manner; there is no nexus with the objective of ensuring that only candidates with the basic level of proficiency and attainment gain admission to medical seats, covered by NEET.

- (6) This court’s reasoning with respect to exclusion of NIOS candidates from NEET, for reasons discussed in *Anshul Agarwal* logic squarely apply.
- (7) Candidates who fall in Sl. No. 7 (i.e. those who had cleared in biology as an additional subject in schools) are permitted to apply for the medical entrances in All India Institute of Medical Sciences and also for selection in Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER, for short), Puducherry. These are

premier medical schools. The exclusion of the petitioners and others like them solely because of a unidimensional understanding (based on curricula of CBSE/ICSE and without analysis of any state board syllabi) that those with additional subjects are in some manner not “up to the standard” is illogical and arbitrary.

25. As a premiere standard evolving body, MCI’s determinations are weighty; courts are expected to defer to its expert judgment particularly in regard to norms and standards of medical education, including norms for admission. Yet, those regulations are delegated legislation; they have to stand the test of non-arbitrariness and reasonableness. No doubt, courts would not interfere with them in a routine manner. *Anshul Agarwal* has dealt in great detail and discussed relevant case law that apply to such situations. Those parts of the judgment apply equally in the present case.

26. In *Cellular Operators Association v Telecom Regulatory Authority of India* (2016) 7 SCC 703 the court held that regulations or subordinate legislation, framed by or recommendations of an expert body, can nevertheless, be set aside if they show no *rationale* are arbitrary:

“62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable.

63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the reason for a call drop can technologically be found out and whether it is a network-related reason or a user-related reason.

66. The reason given in the Explanatory Memorandum for compensating the consumer is that the compensation given is only notional. The very notion that only notional compensation is awarded, is also entirely without basis. A consumer may well suffer a call drop after 3 or 4 seconds in a voice call. Whereas the consumer is charged only 4 or 5 paise for such dropped call, the service provider has to pay a sum of rupee one to the said consumer. This cannot be called notional at all. It is also not clear as to why the Authority decided to limit compensation to three call drops per day or how it arrived at the figure of Re 1 to compensate inconvenience caused to the consumer. It is

equally unclear as to why the calling party alone is provided compensation because, according to the Explanatory Memorandum, inconvenience is suffered due to the interruption of a call, and such inconvenience is suffered both by the calling party and the person who receives the call. The receiving party can legitimately claim that his inconvenience when a call drops, is as great as that of the calling party. And the receiving party may need to make the second call, in which case he receives nothing, and the calling party receives Re 1 for the additional expense made by the receiving party. All this betrays a complete lack of intelligent care and deliberation in framing such a regulation by the Authority, rendering the impugned Regulation manifestly arbitrary and unreasonable.

69. We have already seen that the impugned Regulation is dated 16-10-2015, which was to come into force only on 1-1-2016. We have been shown a technical paper issued by the same Authority on 13-11-2015 i.e a few days after the impugned Regulation, in which the Authority has itself recognised that 36.9% of call drops take place because of the fault at the consumer's end. Instead of having a relook at the problem in the light of the said technical paper, the Authority has gone ahead with the impugned Regulation, which states that the said Regulation has been brought into force because of deficiency of service by service providers leading to call drops. The very basis of this statement contained in the Explanatory Memorandum to the impugned Regulation is found by the self same Authority to be incorrect only a few days after publishing the impugned Regulation. This itself shows the manifest arbitrariness on the part of TRAI, which has not bothered to have a relook into the said problem. For all the aforesaid reasons, we find that the impugned Regulation is manifestly arbitrary and therefore violative of Article 14, and is an

unreasonable restriction on the right of the appellants' fundamental right under Article 19(1)(g) to carry on business, and is therefore struck down as such."

27. Similarly, the appropriate norm for holding that a regulation is arbitrary was indicated in *Khoday Distilleries v State of Karnataka* 1996 (10) SCC 304, in the following terms:

"The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; 'unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary'. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, 'Parliament never intended the authority to make such Rules; they are unreasonable and ultra vires'. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution."

In *Shri Sitaram Sugar Mills Company v Union of India* (1990) 3 SCC 223 the Supreme Court held as follows:

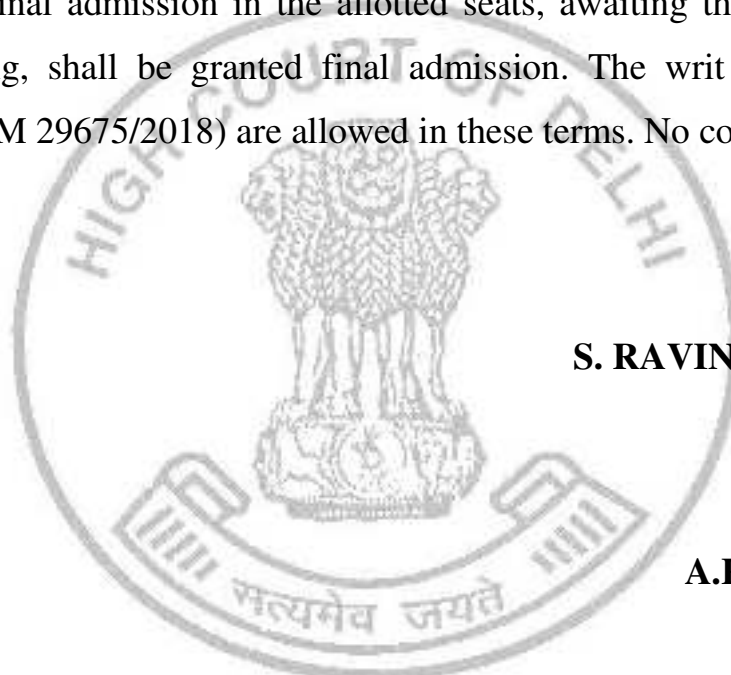
"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

28. Lack of any empirical study, supporting the MCI's conclusion that those who qualify from regular scholastic study in the 10+2 exams with additional subjects of biology/biotechnology either at one go, or after a year, do so without laboratory experience, render Regulation 4 (2) (a) to that extent arbitrary. Juxtaposed with clauses (b) (of Regulation 4 (2) which talks of Intermediate state boards) which does not bespeak of any such disqualification, the irrational and arbitrary nature of the regulation stands out in sharp relief. As outlined in para 24, the MCI's regulations are based on its conclusions rather on any data or objective material. For these reasons, it is held that the category covered in Sl. No. (7) of the clarification issued by MCI and the regulation (Regulation 4 (2) (a)) to the extent it sets out the impugned disqualification *"Furthermore, study of*

Biology/Biotechnology as an Additional Subject at 10+2 level also shall not permissible..." are hereby set aside as discriminatory and arbitrary.

29. As a result of the above discussion as well as in view of the reasoning in *Anshul Agarwal* it is held that the petitioners (and the applicants in CM 29675/2018, i.e. Govind Yadav, Ms. Kiran, Mahesh Ranwa, Harkesh Poonia and Savita Bhadu) all of who had appeared in NEET and qualified in the entrance examination, and were also successful during counselling, but not granted final admission in the allotted seats, awaiting the decision in this proceeding, shall be granted final admission. The writ petition and application (CM 29675/2018) are allowed in these terms. No costs.



S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

AUGUST 17, 2018