

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

Decided on: 27.09.2018

+ **W.P.(C) 8091/2018, C.M. APPL.30989-30991/2018**

SHAHUL HAMEED K.S. AND ORS.Petitioners

Through: Sh. Prashanto Sen, Sr. Advocate with Sh.
Viraj Kadam and Sh. Kaustubh Singh, Advocates.

Versus

MEDICAL COUNCIL OF INDIA AND ANR.Respondents

Through: Sh. Vikas Singh, Sr. Advocate with Sh.
T. Singhdev, Ms. Amandeep Kaur, Ms. Puja
Sarkar, Ms. Michelle Biathansangi Das, Sh. Tarun
Verma, Sh. Abhijit Chakravarty, Advocates, for
MCI.

Sh. Jaswant Rai Aggarwal and Sh. Vikrant Goyal,
Advocates, for Respondent No.2.

+ **W.P.(C) 9855/2018**

PARUL BHATNAGARPetitioner

Through: Sh. Ashok Agarwal, Advocate.

Versus

MEDICAL COUNCIL OF INDIA AND ANR.Respondents

Through: Sh. Vikas Singh, Sr. Advocate with Sh.
T. Singhdev, Ms. Amandeep Kaur, Ms. Puja
Sarkar, Ms. Michelle Biathansangi Das, Sh. Tarun
Verma and Sh. Abhijit Chakravarty, Advocates,
for MCI.

Sh. Sanjib Kumar Mohanty with Sh. Amit
Acharya, Advocate, for Respondent No.2.

+ **W.P.(C) 10077/2018, C.M. APPL.39300-39301/2018**

AMRITHA SANKAR THROUGH : ARPetitioner

Through: Sh. Viraj Kadam, Advocate.

Versus

MEDICAL COUNCIL OF INDIA AND ANR.Respondents

Through: Sh. T. Singhdev, Ms. Amandeep Kaur,
Sh. Tarun Verma, Ms. Puja Sarkar and Ms.
Michelle Biathansangi Das, Advocates, for MCI.
Ms. Monika Arora with Sh. Vibhu Tripathi, CGSC
and Sh. Harsh Ahuja, Advocates, for Respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. The petitioners in these proceedings challenge the validity of amendments to the Foreign Medical Institution Regulations, 2002 (hereafter “the eligibility regulations”) and the Screening Test Regulations, 2002 (hereafter “the screening test regulations”) made by the respondent, Medical Council of India (hereafter “MCI”). They complain that the impugned amendments are arbitrary and unreasonable.

2. The eligibility requirement for admission in an undergraduate medical course in a foreign medical college or university was sought to be regulated by the eligibility regulations framed by MCI. Framed in 2002, the eligibility regulations required that Indian citizens who “*passed the qualifying examination either from India or an equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution*” had to approach it (the MCI) for the purpose, on or after 15th March, 2002. A “qualifying examination” was defined as one which spelt out the eligibility of a candidate for admission to MBBS course in India as prescribed in the Regulations on Graduate Medical Education,

1997. The eligibility regulations enabled the MCI to investigate and inquire into the particulars provided by applicants before issuing the certificate applied for.

3. The undisputed facts necessary to decide both these petitions are that for seeking eligibility certificates (under the eligibility regulations), no separate screening test was provided for initially. In the event the eligibility certificates were issued, the candidate concerned could go abroad, complete the medical course and return to India. Upon so returning, the candidate (now a medical graduate) was not entitled to practise the profession of medicine or surgery, and has to clear a screening test, provided for by Regulation 7 of the Screening Test Regulations, 2002 (hereafter “the screening test regulations”). Regulation 4 of those regulations require that the candidate- in addition to possessing the “*primary medical qualification, either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organisation; or which is confirmed by the Indian Embassy concerned to be a recognised qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification*” (Regulation 3) should also possess the eligibility certificate, issued under the eligibility regulations. In sum, therefore, anyone desirous of studying in a medical course abroad had to fulfil the basic educational qualifications spelt out (10+2 pass or equivalent, with the minimum stipulated percentage in the concerned subjects) and had to obtain an eligibility certificate in terms of the eligibility regulations. After completing the course, the candidate had to qualify in the screening test in terms of the screening test regulations, if she wished to practise as a doctor or surgeon in India. All this changed on 1st March, 2018,

with the amendments impugned in the present cases. The amendments introduced by MCI required such candidates to pass the NEET (National Eligibility test) as a precondition for studying abroad; the screening test regulations too were consequentially amended to prescribe that in addition to possessing the primary medical qualification, the student also had to possess the eligibility certificate showing that she or he had qualified in NEET. The petitioners complain that these requirements are arbitrary. Regulation 8 of the eligibility regulations was amended to insert the following condition:

“(iv) Indian Citizens/Overseas Citizen of India intending to obtain primary medical qualification from any medical institution outside India, on or after May 2018, shall have to mandatorily qualify the ‘National-Eligibility-cum- Entrance Test for Admission to MBBS course’. The result of the ‘National- Eligibility-cum-Entrance Test for Admission to MBBS course’ shall deem to be treated as the Eligibility Certificate for such persons, provided that such persons fulfils the Eligibility Criteria for admission to the MBBS course prescribed in the Regulations on Graduate Medical Education, 1997.”

4. The screening test regulations were likewise amended with effect from 1st March, 2018; the following condition was inserted after Regulation 4 (2):

“2(A) Indian Citizens/Overseas Citizen of India intending to obtain primary medical qualification from any medical institution outside India, on or after May 2018, shall have to mandatorily qualify the ‘National -Eligibility-cum- Entrance Test for Admission to MBBS course’. The result of the ‘National- Eligibility -cum-Entrance Test for Admission to MBBS course’ shall deem to be treated as the Eligibility Certificate for such persons, provided that such persons fulfils the Eligibility Criteria for admission to the MBBS course

prescribed in the Regulations on Graduate Medical Education, 1997.”

5. Explaining the background of their grievance, the petitions state that on 15th February 2012, the MCI issued Gazette notification to amend the Regulations on Graduate Medical Education, 1997 and also to carry out necessary amendment to notification dated 21st December, 2010; for the first time in this notification "National Eligibility-cum-Entrance Test" [NEET] was introduced. This notification and amendment was intended only for students seeking admission for medical course in India. This notification and amendment were the subject matter of challenge before the Supreme Court in writ petitions wherein the provisions relating to NEET were quashed by the court in the judgment reported as *Christian Medical College Vellore & Ors. v. Union of India & Ors* 2014 (2) SCC 305. However, on a Review Petition preferred by the MCI, the Supreme Court in review proceedings [*Medical Council of India v. Christian Medical College Vellore & Ors.* 2016 (3) Bom. CR 809] has revived NEET Regulations. Furthermore, in pursuance of the Order dated 28th April, 2016 of the Supreme Court in *Sankalp Charitable Trust & Anr vs. Union of India & Ors* 2016 (7) SCC 487 mandated that NEET had to be held for admission to the MBBS course; they were conducted for the academic year 2016-17. For admission to MBBS for academic year 2017- 18, in terms of the Indian Medical Council (Amendment) Act, 2016 the National Eligibility-cum-Entrance Test is the uniform entrance examination to all medical educational institutions at the undergraduate level and would continue to be the uniform entrance examination to all medical educational institutions at the undergraduate

level. It is explained that for academic year 2018-19, the NEET examination was declared and last date of registration for NEET was 9th March, 2018.

6. The petitioners complain that in this background, MCI issued the impugned notification dated 1st March, 2018 making amendment to the Screening Test Regulations and also eligibility requirement for taking admission in an undergraduate medical course in a foreign medical institution. As per the notification, such students who wish to go aboard to pursue medical course must clear NEET exam in accordance with clause 4 [2A] of the Screening Test Regulation and clause 8[iv] of the eligibility requirement for taking admission in an undergraduate medical course in a foreign medical institution. On 8th March, 2018, the MCI issued public notice in the newspaper informing public at large, more particularly, students seeking admission for medical course in foreign universities. This publication was done one day before the last date of registration for NEET, i.e. 9th March, 2018. Many students were taken by surprise and many students were not even aware of such notification and such change in procedure.

7. Mr. Prashanto Sen, learned senior counsel appearing for the petitioners, argued that foreign medical universities and medical colleges do not come under the supervision of MCI and consequently it cannot formulate rules for admission to such foreign medical universities. Such being the position, the requirement of students wishing to study abroad also having to qualify in NEET is discriminatory, because it does not sub-serve the object of ensuring quality medical education. Those who do graduate from foreign universities are *ipso facto* not entitled to practice as doctors or medical professionals; they have to clear the screening test, which judges their

competence and proficiency in medical subjects. Therefore, asking such candidates to qualify in NEET which is a national eligibility test for admission to Indian Universities in medical courses has no rational nexus with the object of the Indian Medical Council Act, 1956 (IMC Act). Mr. Sen argued that MCI had already formulated eligibility criteria for students seeking admission foreign medical universities and colleges. This eligibility criteria is to ensure minimum and maximum age of a student, her minimum basic qualification to apply for admission in foreign universities. This eligibility criteria were effective and there was no need of any modification or amendment to it. Students seeking admission in Indian Universities and colleges cannot be treated at par with students taking admission to foreign universities and colleges. Therefore, the application of NEET to these different set of students is discriminatory and amounts to treating un-equals equally.

8. It is submitted that each foreign medical universities and colleges have their own entrance test and their own set pattern of admission. There is no requirement of NEET as an eligibility criterion or a condition precedent for applying to foreign medical universities and colleges. A student seeking admission to foreign medical universities and colleges must fulfill the criteria of admission and appear and clear the entrance test conducted by that particular university or college after reaching the university. It is stated that for example the admission process to Stavropol State Medical University at Stavropol was started on 15th April, 2018 by accepting the School Certificates of 10th, 11th and 12th standard records as per MCI Criteria of 50% in PCB aggregate. Therefore, NEET score in such case is redundant and irrelevant. By insisting that eligibility certificate would be issued only on

clearing the NEET exam, the MCI is taking extraneous and irrelevant factors into consideration.

9. Mr. Sen argued that the MCI granted exemption from the operation of the impugned regulations to two categories. He urged that both these treated students belonging to the same class, differently inasmuch as those who attempted but could not clear the NEET (because of short notice) are treated unfavorably, whereas those who did not appear or went away, before a particular date, were unfairly exempted. The first notification was issued on 23rd April, 2018; it *inter alia*, reads as follows:

“In this context, large number of representations/emails/letters were received from the respective; students/parents/associations etc. regarding exempting of all Indian Citizens/Overseas Citizen of India who have taken admission in Philippines/any other foreign country and are currently pursuing MBBS/Pre-medical course/language course in such foreign countries on or before 31st May, 2018 from the requirement of appearing in NEET 2018.

Accordingly, all the concerned persons are hereby informed that the matter was legally examined and further considered by the Executive Committee of the Council at its meeting held on 12/04/2018 and it has been decided that all Indian Citizens/Overseas Citizen of India who have taken admission in Philippines/any other foreign country and are pursuing BS/Pre-medical course/language course in such foreign countries would be exempted from the requirement of NEET 2018. However, such candidates have to apply to the Medical Council of India for eligibility certificate in terms of Section 13(4B) of the IMC Act, 1956 and the concerned applicants have to furnish a copy of their admission record in BS or any other pre-medical course/language course in the foreign countries, passport containing the visa and immigration towards exit from India as well as entry in that foreign country with their application for eligibility certificate. Any other document, if

required while processing the application, will be sought for by the Council office on case to case basis.

In this regard, it is clarified that this is only a one-time exemption granted keeping in view the peculiar facts and circumstances that have arisen and all those who leave the Indian Shores for pursuing pre-medical/language/medical course on or after 31st May, 2018 shall not be exempted from the requirement of NEET 2018 in terms of the amendment dated 1st March, 2018 to the Screening Test Regulations, 2002; and Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulation, 2002.”

10. It is pointed out that during the pendency of these writ petitions, on 14th September, 2018, another notice clarifying that NEET was not necessary to others as well (but applied to the petitioners and all those who appeared but could not pass in the NEET exam) was issued. The relevant part of that clarification, through public notice, reads as follows:

“It is to inform all concerned that in pursuant to the Order dated 30/08/2018 passed by the Hon'ble High Court of Delhi at New Delhi in WP(C) No.8091/2018, the matter with regard to grant of exemption from the requirement of NEET in respect of Indian Citizens who desirous to take admission in MBBS or equivalent medical course in medical universities outside the country was considered by the Medical Council of India as well as Ministry of Health & Family Welfare, Govt. of India

Now, the Govt. of India, Ministry of Health & Family Welfare, vide its letter No C18018/12/2018-MEP dated 30th August, 2018, addressed to the petitioners has decided that one-time exemption from the requirement NEET may be granted in respect of Indian Citizens who had not at all registered for NEET 2018 and desired to take admission in MBBS or equivalent medical course in a medical university outside the

country in the present academic year 2018-19 subject to following conditions:-

- They shall furnish on undertaking that they had not registered/appeared for NEET 2018.*
- They shall obtain an Eligibility Certificate from the Council prior to admission/joining the foreign medical institutes.*
- The Council may at its discretion verify from the CBSE whether such undertaking is genuine or not. In case, the undertaking is found to be fake/false/forged, appropriate action as permissible in law, including cancellation of Eligibility Certificate would be taken against such candidates.*

The above decision is applicable for all similarly situated persons.”

11. It is argued that the last-minute insistence on clearing the NEET by those who never wished to secure admission in Indian universities in any medical course, placed the petitioners and other candidates at a great disadvantage, because they did not have the benefit of sufficient time to prepare for the test. Stressing that even if the court were to uphold that the impugned regulations were reasonable, the timing of its implementation was arbitrary, learned senior counsel emphasized that the notification to all students was issued through advertisements on 8th March, 2018; the last date for filing the application (to appear in the NEET) was the next day. Since the NEET itself was scheduled barely two months away, the petitioners and others could not be expected to perform reasonably well. It was pointed out on behalf of the petitioners that they stand penalized merely because they attempted, but could not clear the NEET. In the case of the others, for various reasons they did not

appear in the NEET at all. If the plain terms of the regulations are to be seen no one could be given exemption; despite that two public notices, granting reliefs to those who did not appear in NEET after 1st March, 2018 was given.

12. In W.P.(C) 9855/2018 (filed by Ms. Parul Bhatnagar), learned counsel highlights that the candidate had in fact cleared the NEET in 2017; however, on account of her low ranking, she could not secure admission. This time, the candidate wished to study abroad; she was, therefore, not prepared. When the regulations were amended the petitioner appeared, but unfortunately could not clear the NEET. The petitioner submits that though she has been granted admission for pursuing MBBS course in 2018 in LLC Caucasus International University 73 Chargali Str. Tbilisi 0141, Georgia, she could not pursue the course in the absence of a no objection certificate (NOC) which had to be issued by MCI for pursuing MBBS course overseas. It is urged by Mr. Ashok Agarwal, learned counsel for the petitioner that in these facts and circumstances the petitioner made a representation dated 26.06.2018 to MCI requesting it to grant NOC for pursuing overseas MBBS course on the basis of NEET 2017. She, however, received the impugned letter dated 01st August, 2018 in which MCI rejected her request *inter alia* stating that she could not be considered for admission in MBBS or equivalent medical courses in a medical university outside the country on the basis of her 2017 NEET result.

13. In W.P.(C) 10077/2018 (filed by Amritha Sankar), the petitioner secured admission to foreign university on 19th January, 2018, the petitioner has argued that her case would fall under clarification issued by

MCI dated 23rd April, 2018 whereby the petitioner is entitled to one-time exemption since the petitioner had secured admission on 19th January, 2018, much before the 1st March, 2018 amendment. Therefore, the amendment cannot be made applicable to the petitioner. The respondents point out that the course begins after 31st May, 2018 and she, therefore, had to clear NEET, which she could not pass.

14. The MCI's position is that NEET is a uniform entrance examination; it helps in maintaining a level playing field amongst Indian Citizens / Overseas Citizens of India, since the standards of education up to the senior secondary level i.e. 10+2 examination, vary from region to region, however, there can be no distinction drawn on the basis of the fact that certain candidates might want to study medicine within the country while certain candidates, for various reasons, might want to take admission in foreign medical institutes. Thus, the concept of admission to all medical educational institutions at the undergraduate level being subject to qualifying the NEET should receive priority. It is explained that to ensure that the candidates who are admitted to all medical educational institutions at the undergraduate level, are suitable and possess the right aptitude so that they can be shaped well into the medical professionals after due teaching & training. NEET ensures that only the deserving and suitable candidates are admitted to all medical educational institutions at the undergraduate level.

15. Mr. T. Singhdev, learned counsel for MCI submitted that the system of National Eligibility-Cum-Entrance Test as incorporated by the Statutory Regulations, regulates the entry of candidates into the field of medical education so that only the eligible and suitable candidates with competence and capability obtain admission to all medical educational institutions at the

undergraduate level. It is argued that a large number of candidates who obtain admission in foreign medical institutes, find it extremely arduous to even complete the primary medical course and thereafter are unable to qualify the Screening Test for the purpose of obtaining registration to practice medicine in the country. This is directly linked to the aptitude as well as academic competence / capability of the candidates who are seeking to obtain admission in foreign medical institutes. It is submitted that the screening test held (by way of NEET) is of the level of final year MBBS, thus the large number of candidates who are unable to qualify the Screening Test is indicative of the fact that they might not be possessing the aptitude as well as academic competence / capability to undergo medical education.

16. MCI also argues that various foreign medical institutes, grant admissions on the basis of transactions with the agents and are neither alive nor concerned about the future of the candidates, in as much as, if such candidates after completing the primary medical qualifications are unable to qualify the screening test, it is of no relevance to the foreign medical institutes. The foreign medical institutes primarily encourage Indian candidates to seek admission with the sole motive of financial gain and are entirely ignorant about the aptitude as well as academic competence / capability of the candidates who are seeking to obtain admission in such foreign medical institutes. It was pointed out that the decision of the Supreme Court in *Medical Council of India v Indian Doctors from Russia Welfare Association & Ors* (2002) 3 SCC 696 has upheld the validity of the eligibility and screening test regulations.

17. It is pointed out that with effect from 3rd September, 2001, the IMC Act was amended and Sections 13 (4A) and (4B) were inserted to regulate

the eligibility of students wishing to study abroad and also regulate the entry of such foreign university medical graduates into the medical profession.

The said amendments are extracted below:

“(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 qualified the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies that 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 for 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.”

It is submitted that in *Sanjeev Gupta & Ors v Union of India* 2005 (1) SCC 45, the Supreme Court had upheld the validity of the screening test regulations as well as the general scheme providing for the eligibility certificate.

18. Further explaining that NEET, conducted by the CBSE also ensures selection of candidates for admission to MBBS course only on the basis of merit, hence other irrelevant factors do not influence the process of selection and enables the most deserving candidates to obtain admission to all medical educational institutions at the undergraduate level. This negates any discrimination or influence in the process of selection of candidates and limits the selections only on the basis of merit. It is also argued that candidates appear in NEET from every corner of the nation and they are judged on the same standards, therefore there are no issues with regard to equalizing of marks and merits of different candidates, passing different examinations from different regions or States or Universities or schools, making the entire process of selection equal, fair, just and transparent. The NEET is a common platform, and helps the candidates compete among each other and that the said test has credibility in the eyes of the candidates as well as the society so as to decide the competence and capability of the candidates.

19. Counsel pointed out that the NEET was held on 06.05.2018 and to be declared qualified in terms of the Regulations on Graduate Medical Education, 1997, candidates from the General Category had to secure a minimum of 50 percentile while those from the Reserved Categories had to secure a minimum of 40 percentile. A total of 13,23,673 candidates had

registered for NEET, thereafter 12,67,229 candidates had appeared in NEET and 7,12,635 candidates had qualified it. NEET is conducted for a total of 720 marks, thus a candidate securing 119 marks in General Category i.e. 16.52% and a candidate securing 96 marks in the Reserved categories i.e. 13.33%, is eligible for admission to undergraduate medicine courses in India as well as abroad. He thus submitted that there is nothing arbitrary or discriminatory in the regulations, which were formulated in the interests of the general public introducing standards for granting eligibility certificates to those wishing to study abroad, in medicine. It was highlighted in this connection, that many students who went in the past to pursue medical courses overseas could barely pass. In this context, it was stated that to one institution, i.e. Stavropol State Medical University, at Stavropol, Russia, as many as 859 students had secured admission during 2012-14; only 155 could pass the first-year medical course.

20. The respondents sought to explain the necessity for the two exemption circulars, stating that the first was issued because the amended regulations stated that they would apply to those who had gone abroad or were to do so after 31 May 2018. This meant that there was need for clarification in respect of those who reported for pre-medical language courses, which had commenced earlier; the clarification also stated that those joining the course before 31 May, 2018 did not have to appear and qualify in NEET. Likewise, the second clarification of 14-09-2018 applied to *“Indian Citizens who had not at all registered for NEET 2018 and desired to take admission in MBBS or equivalent medical course in a medical university outside the country in the present academic year 2018-19”*. Clearly these were a class apart, who for lack of knowledge could not appear in the NEET. Given that the

petitioners appeared in NEET, but could secure the bare minimum qualifying percentile (of about 16%) relief could not be sought as a matter of right; counsel urged this court not to direct relief to them.

Analysis and Conclusions

21. Every nation is entitled to, through its national institutions and regulatory regime, decide what conditions should prevail to admit candidates (both domestic and international) to medical courses. In the United States of America, the Association of American Medical Colleges (AAMC) mandates that a student wishing to study in that country must attempt and clear the MCAT (Medical College Admission Test). Members of the AAMC have to be accredited by the Liaison Committee on Medical Education (LCME). These institutions ensure upon a certain level of proficiency, knowledge and aptitude; the medical colleges also admit students having regard to their score in MCAT as well as their marks in the host country (i.e. if it is other than the US). This proficiency standard is uniformly applied to all.

22. In India, provisions of the IMC regulations were amended in 2012 and later, the Act was amended to ensure that students qualify in NEET, as a uniform standard for judging proficiency of students aspiring to complete medical and dental courses. As far as those who qualify in overseas universities are concerned, a separate *regime* (Sections 12 to 14) of the IMC Act have been enacted. Overseas medical colleges have a two-fold categorization: the first, those countries which provide for reciprocity in recognition of qualification; “*granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Art*” (per Section 12 (1)) and those which do not. As regards those that do not provide for reciprocity, Section

13 (1) states that *“The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.”* It is to this provision - Section 13, that amendments were carried out in 2001, *firstly*, requiring that those wishing to study abroad in any college *after* the date of coming into force of the amendment, have to necessarily obtain an *“eligibility certificate”* as a pre-condition to study abroad (Section 13 (4B)) and *secondly*, that those graduating from such foreign universities cannot *ipso facto* claim entitlement to register themselves as medical practitioners; they have to qualify in a screening test (under the screening test regulations- *per* Section 13 (4A)).

23. The debate to validity of the 2001 amendments has, in the opinion of this court, been precluded with the decision of the Supreme Court in *Sanjeev Gupta* (supra). The court held as follows:

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

in view the interest of the public at large and the students passing from these institutions decided that the students would be required to do internship for one year as well as to qualify the screening test before they could be given a permanent registration involving themselves in the public health care.

Petitioners are not being debarred from starting medical practice in India but they are merely to undergo screening test as provided in the statutory regulation. The policy decision to subject the students to undergo a screening test has been upheld by this Court in Medical Council of India (supra)."

24. The challenge in these proceedings to the validity of the amendments to the eligibility and screening test regulations, as stated earlier, is twofold: one, that it is arbitrary and has no nexus with the primary object of regulating medical education in India and two, that *arguendo* even if it is valid, their abrupt introduction, leaving students with little time to prepare is unreasonable.

25. There is an abundance of judicial authority which uphold considerable flexibility with the regulatory bodies, especially one that regulates professional and technical education. The court's scope jurisdiction to judicially review such regulatory and expert bodies' decision is of a restricted and limited character. Given these paradigms, this court finds the writ petitioners' argument insubstantial that mandating qualifying in the NEET should not be insisted upon as it has no nexus with the object of the IMC Act. The object and overarching purpose of that enactment is to ensure not only quality medical education but also that those who graduate from medical, dental and other allied fields in universities possess a basic level of proficiency and measure up-to certain standards. The scheme of the Act

provides- through Sections 10 to 14, that the level of proficiency expected of candidates holding themselves out for admission in both medical institutions in India and outside, are to be the same. The first requisite is that the candidate ought to possess the minimum qualifying marks of a particular level of education, which is 10+2 or equivalent. The marks are to be in a certain number of specified subjects. It is only then that the candidates concerned, are allowed to participate in the need. Thereafter, depending upon the overall standard of the candidates, marks are awarded based upon the percentile method in the NEET.

26. In the current as well as in the previous NEET, apparently, despite the participation of a large number of candidates who wished to become doctors, the qualifying percentile was only 50, which translated to about 16% of the maximum marks that could be granted. For reserved category candidates, the standard was even lower-it was 13%. In these circumstances, the Central Government and MCI, based upon consultations and the materials available with them, were of the opinion that those wishing to study abroad and were routinely furnished certificates under the eligibility regulations in the past, now had to qualify in NEET. Apparently, foreign governments had been in consultation with the Central Government (a letter of 10th February, 2017) has been specifically referred to in this regard. The MCI has also relied upon statistics which came to its possession based upon the information received from the Russian Federation, with respect to the performance of Indian candidates. These were causes of concern both to the Central Government as well as foreign governments which expressed their apprehensions that admissions to such foreign universities were not always based on the merit aptitude or the proficiency of the candidates, but rather upon the other

considerations, primarily and predominantly monetary. The Kazakhstan Government had expressed that admissions were granted through contractors and agents who rarely took into account the candidates' academic achievements, but were more interested in ensuring that the seats were filled. These materials formed the subject matter of consultations between the Central Government and the MCI. The MCI through its Executive Council decided to frame regulations; the draft regulations were framed. The General Body of the MCI approved the draft regulations. After they were placed before the overseeing committee (constituted by the Supreme Court), which approved them some-time in January, 2018, the regulations were then forwarded to the Central Government. That the regulations were imminent, became apparent when a public notice was circulated widely in Indian newspapers on 9th February 2018. The candidates were informed that in order to secure eligibility certificates, participation in NEET was a must. The newspaper publication (a copy of which has been produced) reads, *inter alia*, as follows:

“Students wishing to study MBBS in foreign universities may soon have to clear the NEET as the government plans to make the test mandatory for them. According to a senior Health Ministry official, the proposal is at an advanced stage. Since 2016, students who wish to study medicine in any government or private medical college in India have to clear the National Eligibility Cum Entrance Test (NEET).”

"A mere 12-15% of the graduates who come back after studying abroad manage to clear the Foreign Medical Graduates Examination (FMGE). If they don't clear the FMGE, they don't get registered to practice in India. In such cases, they start quackery or practice illegally, which can be dangerous. So the move is aimed at ensuring only competent students get to study

medicine in foreign universities," the official said. FMGE is a licensure examination conducted by the Medical Council of India.

At present, a student who wishes to take up admission to a medical course outside India has to obtain an 'Essentiality Certificate' from the MCI.

Every year, around 7,000 students go outside India to study medicine, mostly to China and Russia.

"As per the data, the percentage of graduates who have studied abroad and have cleared the FMGE has ranged between 13-26.9% in the last five years. This is really a matter of concern as they are notable to contribute to healthcare in India after they come back," the official explained.

Once the new proposal is approved, students aspiring to study medicine outside India will be given a No Objection Certificate (NOC) only if they clear NEET, the official said."

27. The MCI also carried, on its website, from 22nd February, 2018, intimation that the change (in the form of mandatory NEET qualification to secure eligibility certificate) was imminent. It was in this background that the amendments impugned in this proceedings were carried out on 1st March, 2018; another public notice informing students was issued on 8th March 2018.

28. This court is of the opinion that the MCI's amended regulations, mandating that those desirous of studying abroad, had to appear and qualify in NEET has direct nexus with the quality of professionals who – or many of who would - wish to practise the medical profession and seek enrolment in the State register, for that purpose. It is now essential that every candidate

wishing to secure admission to any medical college in India, has to appear and clear the NEET. Though at the first blush, those wishing to study abroad are a separate class, nevertheless, after the amendment of 2001 (to the IMC Act) and introduction of Section 13 (4B) every Indian citizen wishing to study abroad has to secure an eligibility certificate from the Central Government. Now, that provision is not under challenge; even an attack to it is of no avail, given the judgment of the Supreme Court in *Sanjeev Gupta* (supra). Therefore, it is now no longer open to challenge the authority of the MCI to insist that an eligibility certificate is a precondition for admission abroad. Such being the case, the MCI's amendment of the eligibility regulations to require every candidate (wishing such a certificate) to also qualify in the NEET as a precondition to apply for eligibility certificate cannot be faulted. Such a requirement is neither unreasonable nor arbitrary. As held in *Principal, Patna College, Patna and Ors. v. Kalyan Srinivas Raman* AIR 1966 SC 707; *State of Kerala v. Kumari T.P. Roshana and Anr.*, (1979) 1 SCC 572; *Medical Council of India v. State of Karnataka and Ors.* (1998) 6 SCC 131 and *Dr. Preethi Srivastava v. State of M.P.* (1999) 7 SCC 120, the primary decision of an academic regulatory authority, if made within bounds of statute with the object of achieving academic or professional excellence, cannot in the absence of palpable or manifest arbitrariness, be interfered with by courts in judicial review. Consequently, the challenge on the ground of arbitrariness and unreasonableness fails.

29. The second grievance of the petitioners is that the two exemption circulars have carved out unfair exceptions and denied the benefit of one-time exemption from the operation of the rules. The MCI's position is that

both circulars cover those who had already reported to their overseas medical courses, to attend mandatory language courses and those who could not appear in the NEET on account of lack of awareness of the amended regulations.

30. The first clarification/exemption notice of 23rd April, 2018, in material particulars provides as follows:

“all Indian Citizens/Overseas Citizen of India who have taken admission in Philippines/any other foreign country and are pursuing BS/Pre-medical course/language course in such foreign countries would be exempted from the requirement of NEET 2018/ However, such candidates have to apply to the Medical Council of India for eligibility certificate In terms of Section 13(4B) of the IMC Act, 1956 and the concerned applicants have to furnish a copy of their admission record in BS or any other pre-medical course/language course in the foreign countries, passport containing the visa and immigration towards exit from India as well as entry in that foreign country with their application for eligibility certificate...”

31. The second exemption notice states pertinently that:

“Now, the Govt. of India, Ministry of Health & Family Welfare, vide its letter No C18018/12/2018-MEP dated 30th August, 2018, addressed to the petitioners has decided that one-time exemption from the requirement NEET may be granted in respect of Indian Citizens who had not at all registered for NEET 2018 and desired to take admission in MBBS or equivalent medical course in a medical university outside the country in the present academic year 2018-19 subject to following conditions:...”

32. As far as the first notification – dated 23rd April, 2018, this court is of opinion that there was some justification for the MCI to exempt candidates

because there was likely confusion as regards those who had proceeded abroad, *before* the amendment came into force: this controversy was because in some countries, the student/ applicant had to mandatorily study a minimum course to gain familiarity in the concerned language; the main medical course was to begin later. Those students who had travelled abroad, after being intimated about their admission, naturally were apprehensive about their status, because of the wording of the eligibility and screening test regulations. In these circumstances, the MCI clarified that such students did not have to qualify in NEET provided they left India “*on or before 31st May, 2018*”. The court finds no reason to fault the MCI on this aspect.

33. As regards the second category, the consideration by the MCI of the issue regarding one-time exemption was in the context of an order of this court, dated 3rd August, 2018. That order, *inter alia*, reads as follows:

“We have heard counsel for the parties and are of the opinion that in case the petitioners represent to the respondent seeking appropriate one time exemption as an exception from the requirement of having to clear NET for admission to overseas medical courses by Monday, i.e., 06.08.2018, the Central Government after appropriate consultation with the Medical Council of India, shall make its decision on an urgent basis and communicate its decision to the petitioners within a period of one week of receipt of such representation.”

34. Taking cue from the above order, the petitioners represented to the MCI; it then indicated a one-time exemption from NEET, of those who had not appeared in the test, as they were not aware. In this court’s opinion, the classification sought to be made between those who did not appear and those who appeared, but did not qualify, is not justified in the circumstances. Once

the regulations required that candidates who were to proceed abroad after 31st May, 2018 had to qualify in NEET, to secure an eligibility certificate (i.e. after the first clarification, having regard to the terms of the eligibility regulations) a further division of those who did not appear (on the assumption that all of them could not appear because they were unaware) and those who appeared, but could not clear in the examination, was not justified. The second exemption (dated 14th September, 2018) was premised on the short notice given to candidates, at least partly. It is undeniable that when the public notice – after the amendment was issued, i.e. on 8th March, 2018, the students had to scramble to fill the forms for NEET; the last date was 9th March, 2018. Having done so, they had little time left to prepare. In these circumstances, as between those who chose not to appear in NEET and those who did (but could not qualify) the latter category did abide by the regulations. That has now become a millstone around their neck; their inability to qualify in the NEET (because of the shortage of time available) resulted in their inability to clear the test. On the other hand, all those who stood outside the process (regardless of whether they were aware or not aware) have benefitted from their failure and omission to adhere to the law. This, in the opinion of the court, has resulted in unfairness upon the petitioners and those like them who at least abided by the rules and regulations. In these peculiar circumstances, the denial of the one-time exemption to those who could not qualify, but appeared in NEET, has resulted in unfairness. Both categories (those who appeared but failed to qualify and those who did not appear) fall in the same class, i.e. candidates who did not qualify in NEET after 31st May, 2018. To grant eligibility

certificate (without insisting on NEET results) only to those who did not attempt the test, therefore, was unfair.

35. Having regard to the above discussion and the peculiar circumstances of the case, this court hereby declares that the petitioners are entitled to the same treatment as was given to those who did not appear in NEET; as a one-time measure, the respondents are directed to ensure that eligibility certificates are issued to all students who appeared in NEET (including the petitioners) but did not qualify the test. The MCI is also directed to ensure that consequential order and relief is given in the screening test regulations to those categories of students, entitled to the benefit of the present judgment; such consequential orders shall also be issued in respect of those covered by the previous two exemption notices (dated 23rd April, 2018 and 14th September, 2018). The eligibility certificates shall be made available to such students, within one week from today, subject to such students complying with the formalities spelt out in the second notice (dated 14th September, 2018).

36. In view of the foregoing discussion, the writ petitions are allowed in part, in terms of the above directions. There shall be no order on costs.

Order *dasti* under the signatures of Court Master.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

SEPTEMBER 27, 2018