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

+ **W.P.(C) 6479/2016**

DR. OJASVI SHARMA & ORS

..... Petitioners

Through: Mr Sanat Kumar, Senior Advocate with Mr Virendra Rawat, Mr Vinayak Batta and Mr Sahil, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr Vikas Singh, Senior Advocate with Mr T. Singhdev, Ms Biakthansangi Das, Ms Puja Sarkar, Mr Tarun Verma, Ms Arunima Pal and Mr Abhijit Chakraborty, Advocates for R-2/MCI.

WITH

+ **W.P.(C) 9132/2016**

SHRUTI JAIN

..... Petitioner

Through: Mr Sanat Kumar, Senior Advocate with Mr Virendra Rawat, Mr Vinayak Batta and Mr Sahil, Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr G. Tushar Rao, Advocate for R-1/UOI.
Mr Vikas Singh, Senior Advocate with Mr T. Singhdev, Ms Biakthansangi Das, Ms Puja Sarkar, Mr Tarun Verma, Ms Arunima Pal and Mr Abhijit Chakraborty, Advocates for R-2/MCI.

WITH
+ **W.P.(C) 8170/2017 and CM No. 33568/2017**

MANISH CHANDRA SINGH Petitioner
Through: Mr Sanat Kumar, Senior Advocate with Mr Virendra Rawat, Mr Vinayak Batta and Mr Sahil, Advocates.

versus

UNION OF INDIA & ANR Respondents
Through: Mr A.P. Sahay, CGSC for UOI/R-1.
Mr Vikas Singh, Senior Advocate with Mr T. Singhdev, Ms Biakthansangi Das, Ms Puja Sarkar, Mr Tarun Verma, Ms Arunima Pal and Mr Abhijit Chakraborty, Advocates for R-2/MCI.

WITH
+ **W.P.(C) 5102/2018**

DR. HARNOOR SINGH PRUTHI Petitioner
Through: Mr Sanat Kumar, Senior Advocate with Mr Virendra Rawat, Mr Vinayak Batta and Mr Sahil, Advocates.

versus

UNION OF INDIA & ANR Respondents
Through: Mr Vikas Singh, Senior Advocate with Mr T. Singhdev, Ms Biakthansangi Das, Ms Puja Sarkar, Mr Tarun Verma, Ms Arunima Pal and Mr Abhijit Chakraborty, Advocates for R-2/MCI.

WITH
+ **W.P.(C) 5432/2018 and CM No. 21093/2018**

DR. GURWINDER SINGH Petitioner
Through: Mr Sanat Kumar, Senior
Advocate with Mr Virendra
Rawat, Mr Vinayak Batta and
Mr Sahil, Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr Vikas Singh, Senior
Advocate with Mr T. Singhdev,
Ms Biakthansangi Das, Ms Puja
Sarkar, Mr Tarun Verma, Ms
Arunima Pal and Mr Abhijit
Chakraborty, Advocates for R-
2/MCI.
Mr Zorawar Singh, Advocate for
R-3/Punjab Medical Council.

WITH
+ **W.P.(C) 5436/2018 and CM No. 21098/2018**

DR. MAYANK SHARMA Petitioner
Through: Mr Sanat Kumar, Senior
Advocate with Mr Virendra
Rawat, Mr Vinayak Batta and
Mr Sahil, Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr Vikas Singh, Senior
Advocate with Mr T. Singhdev,
Ms Biakthansangi Das, Ms Puja
Sarkar, Mr Tarun Verma, Ms
Arunima Pal and Mr Abhijit
Chakraborty, Advocates for R-
2/MCI.

Mr Zorawar Singh, Advocate for
R-3/Punjab Medical Council.

WITH

+ **W.P.(C) 7174/2018 and CM No. 27354/2018**

DR ANKIT MIDDHA & ORS

..... Petitioners

Through: Mr Sanat Kumar, Senior
Advocate with Mr Virendra
Rawat, Mr Vinayak Batta and
Mr Sahil, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Nikhil God, Mr Ashutosh
and Mr Dushyant, Advocates for
UOI.

Mr Vikas Singh, Senior
Advocate with Mr T. Singhdev,
Ms Biakthansangi Das, Ms Puja
Sarkar, Mr Tarun Verma, Ms
Arunima Pal and Mr Abhijit
Chakraborty, Advocates for R-
2/MCI.

Mr Zorawar Singh, Advocate for
R-3/Punjab Medical Council.

WITH

+ **W.P.(C) 7197/2018 and CM No. 27418/2018**

DR. KUSHAGRA GUPTA

..... Petitioner

Through: Mr Sanat Kumar, Senior
Advocate with Mr Virendra
Rawat, Mr Vinayak Batta and
Mr Sahil, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Vikas Singh, Senior Advocate with Mr T. Singhdev, Ms Biakthansangi Das, Ms Puja Sarkar, Mr Tarun Verma, Ms Arunima Pal and Mr Abhijit Chakraborty, Advocates for R-2/MCI.

Mr Vinod Diwakar, CGSC for UOI.

Mr Zorawar Singh, Advocate for R-3/Punjab Medical Council.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.07.2019

VIBHU BAKHRU, J

1. The above-captioned petitions have been filed by medical practitioners being aggrieved by the action of the Medical Council of India (MCI) in not recognizing the additional qualification acquired by the petitioners from the University of Buckingham, United Kingdom. In certain cases, MCI has revoked the registration of such additional qualification, which was granted earlier.

2. These petitions involve a common question and therefore, the same have been taken up together. The only question to be addressed is whether the qualification of MD (Clinical) in General Internal Medicine (hereafter 'the Qualification') acquired by the petitioners from the University of Buckingham (hereafter 'the University') is a recognized medical qualification entitling them to practice as specialists.

3. In order to provide factual context for addressing the controversy,

the facts relevant in W.P.(C) 8170/2017 are noticed hereafter. The petitioner in the said petition is hereafter referred to as ‘the petitioner’.

4. The petitioner was awarded a Degree of MBBS by Himalaya Institute of Medical Science, Jollygrant, Dehradun on 30.11.2007. The said Institute is affiliated to the H.N.B. Garhwal University, Srinagar, Uttarakhand.

5. The petitioner applied for and was admitted to the degree program of Doctor of Medicine in General Internal Medicine with the University, in the year 2010. The petitioner claims that he underwent a training program at Aneurin Bevan Health Board, Royal Gwent Hospital, Cardiff Road, Newport in the Department of Cardiology during the period 07.11.2011 to 01.02.2012. The petitioner claims that thereafter, he also underwent training at the said hospital with the Department of Medicine, Section of Diabetes and Endocrinology.

6. The petitioner was admitted to the degree program with the University during the period 27.09.2010 to 07.09.2012. And, on 15.03.2013, the University awarded the petitioner a degree of MD in General Medicine pursuant to the petitioner successfully completing the course.

7. On 04.05.2013, the petitioner applied to MCI for registration of the Qualification awarded by the University. The petitioner’s Qualification was entered in the Indian Medical Register as an additional qualification under Section 26(1) of the Indian Medical Council Act, 1956 (hereafter “IMC Act”) and a registration certificate

(being registration certificate No. 13-13588) was issued by MCI.

8. On 07.07.2015, the petitioner applied for registration with the Medical Council of Uttar Pradesh. He further submits that he had been practicing as an MD (General Internal Medicine) at Lucknow since the year 2013.

9. There was a question raised as to whether the degree of MD, General Internal Medicine awarded by the University was recognised in the U.K. In view of the doubt whether the Qualification awarded by the University was recognised for enrolment with General Medical Council, U.K. (hereafter “GMC”), MCI inquired from several candidates who had sought registration of their Qualification from the University to, *inter alia*, furnish a letter from the Medical Council / State Medical Board or any other Government Agency confirming that the said medical qualification was recognised to enable a medical practitioner to practice as a specialist in the U.K. Admittedly, none of the candidates could furnish a certificate to the aforesaid effect.

10. In view of the above, the University sent a letter dated 22.12.2014 to MCI, indicating that the candidates would find it difficult to furnish a letter / certificate as sought for by MCI, as the said degree program did not, *per se*, confer any right of enrolment as a medical practitioner. However, a successful graduate would be entitled for registration with GMC and could practice medicine in the U.K., if it was stated that the said degree, in conjunction with completion of a GMC sponsorship scheme would culminate to a positive recommendation to the GMC.

11. Given the clarification that the degree awarded by the University was not, *per se*, recognised for practicing medicine in the U.K., MCI sent a letter dated 29.06.2015 to the High Commission of India, London, requesting the High Commission to seek a confirmation from GMC whether the qualification of MD (General Internal Medicine) as awarded by University of Buckingham was recognised for enrolment as a medical practitioner in the said specialty in the U.K.

12. On a clarification being sought by the Indian High Commission, GMC responded by an email dated 21.07.2015, clearly stating that the degree in question awarded by the University of Buckingham was not accepted for the purposes of registration or entry to training. The said email is reproduced below:-

“Your GMC reference number 1-JRG1G5

Dear Maneesha

Thank you for your email.

The Medical Degree (General Internal Medicine) qualification awarded by University of Buckingham is not accepted for the purpose of registration or entry to training.

Please let us know if you have any questions. We’ll do our best to help.

Yours sincerely

Kelli Blanchett
Education Quality Advisor
General Medical Council”

13. In view of the above, on 22.06.2017, MCI revoked the registration of the Qualification that was entered against the petitioner's name in the Indian Medical Register.

14. Aggrieved by the same, the petitioner has filed the present petition.

15. It was initially contended before this Court that Postgraduate Medical Qualifications as awarded by the University were duly recognised in the U.K. as postgraduate qualifications for practicing as a specialist. However, the same would not entitle a medical practitioner to be registered with GMC for practicing medicine, if the medical practitioner had not completed his graduation from the U.K., and, had not cleared the specified examination or undergone a sponsorship program. It was contended that since the petitioners in these cases had not obtained their undergraduate degree from the U.K. (M.B.B.S. Degree), they were not entitled to be registered as medical practitioners in the U.K. However, that did not mean that the Qualification as awarded by the University was not recognised in the U.K. It was contended that if the petitioners had secured their undergraduate qualification in the U.K., the degree of MD (Internal Medicine) awarded by the University would entitle them to practice as specialists in the the U.K.

16. In view of the aforesaid contention, on 25.01.2019, this Court passed the following order:-

“1. The controversy involved in these petitions is whether certain post-graduate medical qualifications as awarded by University of Buckingham (hereafter ‘UoB’), is recognised for enrolment as medical practitioners in the concerned specialities in United Kingdom.

2. It is the petitioner’s case that the post graduate medical qualification as awarded by UoB is duly recognised in United Kingdom as a post graduate qualification. However, if the medical practitioner has not completed his graduation in that country or cleared PLAB or undergone a sponsorship programme, he/she is ineligible to practice in that country.

3. The notification dated 07.03.2008, issued by the Ministry of Health and Family Welfare recognises all post graduate medical qualifications awarded in United Kingdom provided the same are recognised for enrolment as a medical practitioners in the *concerned specialities* in that country.

4. This Court is, *prima facie*, of the view that whether the qualification in question complies with the said condition has to be viewed in the context whether that qualification is recognised as a post graduate qualification entitling the qualified practitioners to practice as such; that is, practice as a specialist in that field.

5. Clearly, the notification would be of little assistance to the petitioners if the additional post graduate medical qualification does not entitle them to practice as a *specialist* in UK assuming that their graduate course is recognised in UK (either through a sponsorship or PLAB). Conversely, the additional qualifications awarded by UoB would be recognised if they are recognised as specialisations in UK enabling the medical practitioners to practice in the *concerned specialities in that country*.

6. Admittedly, the persons completing MBBS in this country are not entitled to practice in the UK (United Kingdom) and, therefore, irrespective of the additional qualifications that they may acquire in that country, they would not be entitled to be enrolled as medical practitioners in the concerned specialities. It would, thus, be necessary for MCI to ascertain whether the post graduate medical qualification(s) in question are *per se* recognised as specialisation(s) for persons who are otherwise entitled to practice as medical practitioners.

7. The learned counsel appearing for the respondents seeks time to take instructions whether any such further clarification can be obtained with regard to the post graduate qualifications in question.

8. List on 12.03.2019.”

17. In compliance with the aforesaid order, MCI sent a communication to GMC seeking necessary clarification in this regard. Thereafter, an additional affidavit was filed on behalf of MCI, *inter alia*, affirming that pursuant to the orders passed by this Court on 25.01.2019, MCI had requested the Indian High Commission, London to seek necessary clarification from GMC. Further, MCI had directly communicated with GMC to obtain necessary clarification. In this regard, MCI had sent an email dated 24.05.2019, which is set out below:-

“Sir,

I would like to inform you that in 2015, the General Medical Council vide email dated 21st July, 2015 communicated the High Commission of India, London that the medical degree (General Internal Medicine) qualification awarded by University of

Buckingham is not accepted for the purpose of registration or entry to training. Accordingly, the Medical Council of India is not granting registration of said qualification u/s 26 of the IMC Act, 1956.

Now, a number of Indian nationals who have been awarded MD (General Internal Medicine) degree by the University of Buckingham, are approaching to the Medical Council of India for registration of said qualification.

In this regard, I would like to request you to confirm the following, at the earliest for further consideration in the matter:-

1. Is MD (General Internal Medicine) of University of Buckingham, now, recognized/acceptable postgraduate medical qualification by the General Medical Council?
2. Is MD (General Internal Medicine) of University of Buckingham recognized/acceptable postgraduate medical qualification by the General Medical Council for the persons who are possessing graduate medical qualification (MBBS/MBBCh) from British University?
3. Are the persons who possessing (MBBS/MBBCh) from British University and thereafter, acquire MD (General Internal Medicine) from the University of Buckingham, United Kingdom, entitled for registration/enrolment as a Specialist medical practitioner in the said specialty on the basis of MD (General Internal Medicine) from the University of Buckingham, United Kingdom?

An early reply in the matter will be highly appreciated.

Regards,

(Rajiv Kumar)

Assistant Secretary (Registration),
Medical Council of India”

18. It is affirmed on behalf of MCI that GMC had responded to the aforesaid email by an email sent on 29.05.2019. The said email is set out below:-

“Dear Mr Kumar

Thank you for your email about acceptable postgraduate qualifications.

I will answer your questions in the order you have asked:

1. No, an MD in General Internal Medicine is not an acceptable postgraduate qualification (PGQ) for the purpose of registration. You can check our list of acceptable qualifications on our website.
2. No, it doesn't matter where you graduated from, the PGQ is not acceptable for the purpose of registration.
3. The doctor may be eligible for inclusion of the specialist register following a CESR application. You can read more about this in our guidance.

If you would like to discuss this further, please call us using the number below or reply to this email.

Yours sincerely

Taylor

Taylor Hilson

Contact Centre Adviser
Registration and Revalidation Directorate”

19. In view of the above email, there can be little doubt that the Qualification awarded by the University is not accepted as a postgraduate qualification for the purposes of registration as a medical practitioner in the U.K. Thus, the contentions as initially advanced on behalf of the petitioners (which were, *prima facie*, accepted by this court on 25.01.2019) cannot be accepted.

20. Mr Sanat Kumar, learned senior counsel appearing for the petitioners has now canvassed the plea of estoppel. He contends that MCI had granted registration of the Qualification awarded by the University to some of the petitioners herein and therefore, is estopped from revoking the same. He further states that a large number of students had proceeded to join the degree program with the University based on the understanding that MCI would recognise the Qualification awarded by the University. He also points out that some of the petitioners had filed applications under the Right to Information Act, 2005 seeking specific information whether the degree awarded by the University would be recognised as an additional qualification. In response to the said information, MCI had referred to a notification dated 07.03.2008, which according to Mr. Kumar, indicated that the degree awarded by the University would be recognised by MCI. He submits that some of the petitioners had also sought information as to the names of the medical practitioners against whose names the additional qualification awarded by the University had been entered in

the Indian Medical Register. In response MCI provided a list of medical practitioners who were practising as specialists on the strength of the Qualification awarded by the University. He submits that MCI is estopped from now contending that the said degree was not recognised as a postgraduate qualification in India.

21. He also relied on the decision of Delhi High Court in *Somya Gupta and Ors. v. Guru Gobind Singh Indraprastha University and Anr.: W.P.(C) 12097/2018, decided on 07.01.2019* and the decision of the Supreme Court in *Manuelsons Hotels Pvt. Ltd. v. State of Kerala and Ors.: (2016) 6 SCC 766* in support of his contention.

Reasons and Conclusion

22. At the outset, it is necessary to refer to Section 26 of the IMC Act which contains provisions for registration of an additional qualification. Section 26 of the IMC Act is set out below:-

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

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

23. It is clear from the plain language of Section 26(1) of the IMC Act that only “a recognized medical qualification” can be entered in the Indian Medical Register against the name of the medical practitioner. Clearly, a qualification which is not a recognised medical qualification cannot be entered in the Indian Medical Register.

24. Section 12(1) of the IMC Act specifies that the medical qualifications granted by medical institutions outside India which are included in the Second Schedule to the IMC Act, shall be recognised as a medical qualification for the purposes of the IMC Act. Admittedly, the Qualification from the University is not included in the Second Schedule to the IMC Act.

25. Sub-section (3) of Section 13 of the IMC Act also provides for recognition of the medical qualifications which are included in Part II of the Third Schedule to the IMC Act. Sub-section (4) of Section 14 of the IMC Act empowers the Central Government to amend Part II of the Third Schedule so as to include therein any qualification granted by a Medical Institution outside India, which is not included in the Second Schedule. Sub-sections (3) and (4) of Section 13 of the IMC Act are set out below:-

“(3) The medical qualifications granted by medical institutions outside India, before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical

Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

- (4) The Central Government, after consulting the Council, may, by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India, which is not included in the Second Schedule.

Provided that after the commencement of the Indian Medical Council (Amendment) Act, 2001, no such amendment shall be made in Part II of the Third Schedule to include any primary medical qualification granted by any medical institution outside India:

Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary medical qualification granted by any medical institution outside India to any person whose name is entered in the Indian Medical Register.

Explanation- For the purposes of this sub-section, “primary medical qualification” means any minimum qualification sufficient for enrolment on any State Medical Register or for entering the name in the Indian Medical Register.”

26. The petitioners relied on a notification dated 07.03.2008 for asserting that the Qualifications awarded by the University is included as a recognised medical qualification. By virtue of the said notification,

Part II of the Third Schedule was amended to recognise certain postgraduate qualifications. The petitioners rely on the following entry in support of their claim:-

“All post graduate medical qualifications awarded in United Kingdom and recognised for enrolment as medical practitioners in the concerned specialties in that country;”

27. It is apparent from the above that the necessary pre-condition for a postgraduate medical qualification awarded in the U.K. to be recognised, is that the same should also be recognised for enrolment as in the concerned speciality in that country. In the present case, GMC – which is the concerned professional body granting registration to medical practitioners for practicing medicine in the U.K.– has clarified in unequivocal terms, that the Qualification is not an acceptable postgraduate qualification for the purposes of registration with GMC.

28. In view of the above, the decision of MCI to not recognise the Qualification as a recognised medical qualification under Part II of the Third Schedule to the IMC Act, as amended by the notification dated 07.03.2008, cannot be faulted.

29. The contention that MCI is now estopped from revoking the registration already granted or from denying the registration of an additional qualification in view of the responses issued by it under the Right to Information Act, 2005 is also unmerited.

30. It is important to note that the decision — whether a qualification is a recognised medical qualification or not — is not an

administrative decision. Such qualifications are set out in the Second Schedule and Part II of the Third Schedule of the IMC Act. Further, It is also well settled that there is no estoppel against the statute. In ***Maharishi Dayanand University v. Surjeet Kaur: (2010) 11 SCC 159***, the Supreme Court had explained that “*there can be no estoppel / promissory estoppel against the legislature in the exercise of legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition*”.

31. MCI is vested with the duty to discharge the functions as stipulated in the MCI Act. It, therefore, cannot act contrary to the provisions of the IMC Act. Plainly, the issue of estoppel cannot be raised to prevent IMC from discharging its functions in accordance with the IMC Act.

32. Undeniably, MCI had granted registration of the Qualification awarded by the University to certain candidates including the petitioner. It is affirmed on behalf of MCI that it had granted registration of an additional qualification to 11 candidates without verification in view of the notification dated 07.03.2008, on the basis of the Qualification, as awarded by the University. However, the same was revoked as the said qualification was not recognised under the IMC Act. This Court is unable to accept that MCI must be directed to perpetuate its error and act contrary to the IMC Act even after discovering that the registration of the Qualification had been granted erroneously.

33. The decision referred to this Court in ***Somya Gupta & Ors.***

(*supra*) and the decision of the Supreme Court in ***Manuelsons Hotels Hotels Private Limited*** (*supra*) are of little assistance to the petitioner. In ***Somya Gupta's*** case, the petitioners had challenged the decision of the respondent university declining the applications of the petitioners therein, for migration from their parent colleges. In that case, there was no dispute that the applicants met the eligibility criteria for such migration. The Court found that the petitioners were permitted to join classes and had attended the same for almost three months. They had also severed their relationship with their parent universities / colleges which had removed their names from the rolls. It is in this context, the Court held that the respondent university had by its action effectively held out a representation that the applications filed by the petitioners had been accepted. This Court, therefore, found in favour of the petitioners that the respondent university was estopped from rejecting their applications for migration.

34. It is important to note that the decision involved was an administrative decision where the discretion to allow the application rested with the concerned authorities. There was no statute which proscribed the grant of a request for migration as sought for by the petitioners therein. Clearly, where a representation had been held out and the other party has acted to its prejudice relying on the said representation, the principles of estoppel would be applicable. However, they are not applicable against a statute.

35. In ***Manuelsons Hotels Private Limited*** (*supra*), the Supreme Court had examined the question whether the petitioner therein was

entitled to exemption from the Kerala Building Tax Act, 1975. In that case, the Government had issued an order dated 11.07.1986, accepting the recommendations of the Government of India and suggesting that tourism be declared as an industry. This would enable those engaged in the tourism promotional activities to be eligible for concessions/incentives. It was also stated in the G.O. that action would be taken to amend the Kerala Building Tax Act, 1975. The petitioners claimed that they relied on the said G.O. and sought approval of a hotel project, which was approved by the Government of India vide a letter dated 25.03.1987.

36. In conformity with the G.O. dated 11.07.1986, the Kerala Buildings Tax Amendment Act, 1990 was passed and came into effect from 06.11.1990. Section 3A of the aforementioned act, which was introduced in the Kerala Building Tax Act, 1975, conferred power on the Government, by notification, to grant exemption from payment of building tax in respect of any building or building constructed during such period as may be specified in the said notification. Thus, by virtue of Section 3A of the Kerala Building Tax Act, 1975 as introduced with effect from 06.11.1990, the Government had the power to exempt certain buildings from payment of tax. In the given facts, the Government had held out a representation that such concession would be granted. In this view, the Court held that during the period when Section 3A of the Act was enforced, no building tax was payable by the appellants.

37. It is relevant to mention that Section 3A of the said Act was

deleted with effect from 01.03.1993 and thereafter, the Government did not have any power to grant any exemption. It is important to note that the Court declined to grant any relief for the period after 01.03.1993 since the power of the Government to grant any concession stood withdrawn by virtue of a statutory amendment. It is clear that the principles of promissory estoppel can be applied to bind down authorities to the representations held out by them, but cannot be pressed in service to compel any authority to act contrary to a statute.

38. In *M/s Motilal Padampat Sugar Mills v. State of Uttar Pradesh & Ors.*: (1979) 2 SCR 641, the Supreme Court had explained the principles of promissory estoppel and held that where the Government makes a promise knowing or intending that it would be acted upon by the promisee, the Government would be bound by it. The relevant extract of the said decision is set out below:-

“24. The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception.”

39. In that case, the State Government had given an assurance to the appellant that new Vanaspati units in the State which commence commercial production before 30.09.1970, would be provided concessions in sales tax for a period of three years. The Supreme Court held that the Government was bound to honour the said assurance as the appellants had acted on the said assurance and had commenced commercial production before the stipulated date. It is relevant to note that the Court also clarified that if the Uttar Pradesh Sales Tax Act, 1948 did not contain a provision enabling the Government to grant permission, the said assurance could not be enforced. This is because the State Government could not be compelled to act contrary to the statute. The relevant observations made by the Court are set out below:-

“33. ...Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax.”

40. In view of the above, the contention that MCI is estopped from not accepting the Qualification awarded by the University as a recognized medical qualification, is unmerited.

41. It is also well settled that a writ of mandamus can be issued only

to enforce a legal right. (See. *Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal: (1962) AIR SC 1044*).

42. This Court is not persuaded to accept that the petitioners have any legal right to insist that the Qualification as awarded by the University be entered in the Indian Medical Register as an additional qualification against their respective names, notwithstanding that the said qualification is not a recognised medical qualification under the IMC Act.

43. This Court is conscious of the fact that that the petitioners would face certain amount of hardship on account of Qualification – for which they would have undoubtedly worked hard – not being recognised in this country. However, this Court is unable to grant the relief as sought for as the same would be contrary to the provisions of the IMC Act. Further, the petitioners ought to have been aware that the said degree did not entitle a medical practitioner to practice as a specialist in that field in the U.K. and therefore, would not entitle them to practice as such in India.

44. Having stated the above, this Court also clarifies that in the event the petitioners are able to obtain any material that would establish that the Qualification as awarded by the University is recognised by the concerned authorities in the U.K. for enrolment as medical practitioner in that specialty in the U.K.; the petitioners are not precluded from approaching MCI for entering such qualification against their names in the Indian Medical Register.

45. The petitions are dismissed with the aforesaid observations. All pending applications are also disposed of.

VIBHU BAKHRU, J

JULY 23, 2019
RK

