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

Decided on: 26th February, 2019.

+ **W.P.(C) 5907/2015 & CM Appl. Nos. 10689/2015, 24631/2015 & 45110/2017**

ROHINISH PATHAK

..... Petitioner

Through: Mr. Pankaj Mehta, Ms. Shweta Soni,
Mr. R.K. Mehta, Mr. Harshit
Agarwal & Mr. Pramod Kali Rana,
Advs.

versus

MEDICAL COUNCIL OF INDIA & ANR.

..... Respondents

Through: Mr. T. Singhdev, Mr. Tarun Verma,
Mr. Abhijit Chakravarti, Advs. for R-
1/MCI.
Mr. Ajay Digpaul, CGSC with
Ms. Madhuri Dhingra, Advs. for R-
2/UOI.
Mr. Kirtiman Singh & Mr. Waize
Ali, Advs. for R-3/NBE.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J.

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1. The writ petitioner is a qualified doctor, having being granted an MBBS degree by Soochow University in Shanghai, China. By way of this writ petition, he assails the constitutional validity of Regulation 4(4) of the Screening Test Regulations, 2002 (hereinafter, "the STR") issued by the Medical Council of India (hereinafter, "MCI") and the MCI decision dated

15.04.2015 rejecting his application for an eligibility certificate under Section 13(4B) of the Indian Medical Council Act, 1956 (hereinafter, “the Act”). Alternatively, the petitioner seeks the benefit of the relaxation provided under Regulation 4(4) of the STR.

Facts

2. The facts in brief are that the petitioner passed the Indian Schools Certificate Examination (Class 12) (hereinafter, “ISCE”) in 2002 with the following marks in each subject:-

<i>"External Examination</i>	<i>Percentage Marks</i>
<i>ENGLISH</i>	<i>60</i>
<i>HINDI</i>	<i>83</i>
<i>MATHEMATICS</i>	<i>44</i>
<i>PHYSICS</i>	<i>44</i>
<i>CHEMISTRY</i>	<i>53</i>
<i>BIOLOGY</i>	<i>52"</i>

He went to China in 2005 and completed the MBBS degree from Soochow University which is recognized by MCI. He has also completed Post-graduate in Orthopedic Surgery and claims to be recognized for enrolment to practice medicine in China. By virtue of the STR, the petitioner was required to qualify in a screening test in order to obtain provisional or permanent registration with the MCI or any State Medical Council (hereinafter “SMC”). For this purpose, he required an "eligibility certificate" issued by the MCI under a different set of regulations, viz. the "Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002" (hereinafter, “the ERR”). The petitioner applied for the eligibility certificate three times, on 22.08.2005, 25.10.2010 and 01.04.2015. His first application was rejected by a communication dated 15.04.2006, pointing

out the deficiency that his “10+2 total marks (Physics, Chemistry & Biology) are less than 50%”. This rejection was reiterated by the MCI in its communications dated 23.12.2010 and 15.04.2015, in response to his two later applications.

Submissions

3. Mr. Pankaj Mehta, learned counsel for the petitioner, relied upon the decision of this Court in *Ravinder Singh vs. Medical Council of India* (2010) 168 DLT 95 to argue that the petitioner was entitled to the benefit of “rounding off” of his ISCE marks to enable him to qualify for the eligibility certificate i.e., for his score of 49.66% in Physics, Chemistry and Biology (“PCB”) to be treated as equivalent to 50%. Mr. Mehta argued that the petitioner was entitled to this benefit in law, and also on parity with others who had been admittedly given the benefit. He contended that Regulation 4(4) of the STR, which grants exemption from the screening test requirement to some overseas qualified doctors, is arbitrary and violative of Article 14 of the Constitution. He submitted, in the alternative, that the petitioner also ought to be granted the exemption, under Regulation 4(4) of the STR. He drew our attention particularly to the decision of the Supreme Court in *Medical Council of India vs. Indian Doctors from Russia Welfare Associations and Ors.* (2002) 3 SCC 696.

4. Mr. T. Singhdev, appearing for the MCI contended, firstly, that the present petition was vitiated by delay and laches of a nature which disentitled the petitioner to any discretionary relief. He raised a second preliminary point, viz. that the petitioner had, in his second application for an eligibility certificate, misrepresented that he had secured 50% in PCB. Although he had accurately stated his marks in each of the three subjects, in

the column headed "% Result Pass/Fail" he had entered "50%" against "PCB Total". On merits, Mr.Singhdev submitted that the petitioner had not obtained the eligibility certificate prior to his departure for China, as required under the ERR, and that in any event, in the absence of any enabling provision in the Act or Regulation, the principle of rounding off was not available to cases such as the petitioner's. He cited several decisions in this regard (to which we shall refer presently), and the judgment of this Court in *Shahul Hameed K.S. vs. MCI* 2018 (172) DRJ 385 ((2018) SCC OnLine (Del) 11528) to argue that the Regulations framed by the MCI call for strict adherence. He urged the Court not to countenance any departure from the requirements thereof.

Statutory and Regulatory Provisions

5. The requirements of an eligibility certificate and a screening test in order for an overseas qualified candidate to be enrolled by the MCI/SMC flow from Sections 13(4A) and (4B) of the Act, which were inserted by the Indian Medical Council (Amendment) Act 2001 (w.e.f. 03.09.2001). These provisions are reproduced below:

“13. Recognition of medical qualification granted by certain medical institutions whose qualifications are not included in the First or Second Schedule. –

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[(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical

qualification after such person qualifies the said screening test shall be deemed to be the recognised 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 recognised 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.”

6. In order to resolve the controversy between the parties, we are required to interpret the following provisions of the STR, ERR and the Graduate Medical Education Regulations 1997 (hereinafter, “GMER”):

Screening Test Regulations, 2002

2. Definitions.- *In these Regulations, unless the context otherwise requires,-*

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(f) *“Primary Medical qualification” means a medical qualification awarded by any medical institution outside India which is a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India;*

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(h) “qualifying examination” means the examination to be qualified to become eligible for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997;

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3. An Indian citizen ¹[or a person who has been granted overseas citizenship of India] possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or permanent registration with the Medical Council of India or any State Medical Council on or after 15-3-2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of section 13 of the Act:

Provided that a person seeking permanent registration shall not have to qualify the screening test if he/she had already qualified the same before getting his/her provisional registration.

4. Eligibility criteria.- No person shall be allowed to appear in the screening test unless-

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(2) he/she had obtained ‘Eligibility Certificate’ from the Medical Council of India as per the ‘Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002’. This requirement shall not be necessary in respect of Indian citizens ¹[or overseas citizens of India] who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002.

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²[(4) Provided further that a person seeking provisional or permanent registration shall not have to qualify the Screening Test if he/she holds an Under Graduate medical qualification

¹ Added by Notification No. MCI-203(9)/2009-Regn./39606, dated 25th September, 2009.

² Added by Notification No. MCI-203(9)/2011-Regn./51257, dated 28th December, 2011 (w.e.f 23-12-2011)

from Australia/Canada/New Zealand/United Kingdom/United States of America and the holder thereof also been awarded a Post Graduate medical qualification in Australia/Canada/New Zealand/United Kingdom/United States of America and has been recognised for enrolment as medical practitioner in that country.]

The Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002

2. Definitions:-

In these Regulations, unless the context otherwise requires:-

xxxx xxxx xxxx xxxx

(f) “qualifying examination” means the examination to be qualified to become eligible for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997.

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3. An Indian citizen, who has 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 on or after 15th March, 2002 shall approach the Council for issue of an Eligibility Certificate for that purpose.

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5. The Council shall be free to investigate on its own into the correctness of information furnished by the candidate in his/her application and/or call for any further information in this regard from the candidate and in the event of any information furnished by the candidate being found to be incorrect or false during such investigation or at any subsequent stage, the Council may refuse to issue the eligibility certificate or if already issued may cancel the same and he/she shall stand debarred from appearing in the screening test prescribed in sub-section (4A) of Section 13 of the Indian Medical Council Act, 1956 (102 of 1956) without any notice. The decision of the Council in this regard shall be final.

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

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

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9. *After verification, as required, if the candidate is found to fulfill the eligibility criteria, the Council shall issue an Eligibility Certificate in the prescribed format to the candidate certifying that he/she is eligible to join a medical institution outside India to obtain a primary medical qualification. The certificate shall indicate that on return after obtaining the foreign primary medical qualification, the candidate shall have to undergo a screening test, subject to fulfilment of the conditions prescribed in the Screening Test Regulations, 2002, and that passing this test shall only entitle him to provisional/permanent registration by the Medical Council of India or the State Medical Councils.*

10. *In case the candidate does not fulfil any of the qualifying criteria the Council may reject his application for issue of Eligibility Certificate giving the reasons therefor.*

Graduate Medical Education Regulations, 1997

CHAPTER II

ADMISSION. SELECTION. MIGRATION AND TRAINING:-

4. ***Admission to the Medical Course-Eligibility Criteria:***
No Candidate shall be allowed to be admitted to the Medical Curriculum 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 admission to the MBBS course.

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

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5. Selection of Students: *The selection of students to medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country:*

(1) In states, having only one Medical College and one university/board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

(2) In states, having more than one university/board/examining body conducting the qualifying examination(or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies;

(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges;

(4) A competitive entrance examination is absolutely necessary in the cases of Institution of All India character;

5. Procedure for selection to MBBS course shall be as follows:-

(i) In case of admission on the basis of qualifying examination under Clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above;

(ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Schedule Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above;

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.

Discussion

A. Analysis of Regulations

7. The requirements of these Regulations, read together, are that an overseas qualified candidate could be permitted to practice medicine in

India only if he/ she (a) had qualified to be admitted to an MBBS degree course in India, (b) obtained an eligibility certificate under the ERR prior to taking admission in a foreign medical institution, and (c) cleared the screening test under the STR after abstaining his foreign qualification. The provisions of the STR and ERR have been noticed in detail by the Supreme Court in *Sanjeev Gupta & Ors. vs. Union of India* (2005) 1 SCC 45 and *Yash Ahuja & Ors. vs. Medical Council of India & Ors.* (2009) 10 SCC 313.

8. It is evident from Regulation 3, read with Regulation 2(f), of the ERR that the petitioner's claim for an eligibility certificate can be granted only if he was qualified to be eligible for admission to an MBBS course in India, in terms of the GMER. Regulations 5, 8(ii), 9 and 10 of the ERR indicate the mandatory nature of the eligibility criteria prescribed therein. They empower the MCI to investigate the correctness of the eligibility information supplied by the candidate, verify the same, and provide for the eligibility certificate to be issued only if the said criteria are satisfied.

9. The GMER, by virtue of Regulation 5, prescribes various criteria for selection of students for MBBS courses in India. The criteria mentioned in Regulation 5 are relatable to the several qualifying examinations as enumerated in the various clauses of Regulation 4(2). Common to all the options is the requirement of a minimum average of 50% marks in PCB in the qualifying examination mentioned in Regulation 4(2).

10. Mr. Singhdev has also referred us to the Division Bench judgment of this Court in *Shahul Hameed K.S.* (supra) where this Court inter alia considered the STR and the GMER and upheld the requirements thereof which also now incorporate the requirements of the National Eligibility

Cum Entrance Test (NEET) for overseas qualified doctors to be enrolled under MCI/SMCs.

B. Applicability of Rounding-off

11. The petitioner did pass the ISCE with the subjects mentioned, and was therefore eligible under Regulation 4(2)(a) of the GMER. However, he concededly did not achieve an average of 50% marks in PCB; his average in these three subjects was 49.66%. He therefore sought the benefit of “rounding off”, implying that any score over 49.50% ought to be treated as equivalent to the required 50%.

12. Several judgments have been cited on both sides with regard to the issue at hand. Some of the judgments have applied the principle of rounding off to the number of vacancies available for a particular category of candidates. Those are not applicable to the present situation as, in respect of the number of vacancies or seats available for any purpose, the authority is necessarily required to arrive at a whole number, without fractions. The principle of rounding off is, in those cases, an eminently reasonable way to do so. In contrast, there is no conceptual absurdity in thinking of marks or scores obtained in terms of fractional percentages, and therefore no parallel can be drawn between these two categories of cases.

13. The petitioner's principal reliance is on the judgment of the learned Single Judge of this Court in *Ravinder Singh vs. Medical Council of India* (2010) 168 DLT 95. In that case, the petitioner before this Court urged two grounds in support of his claim for registration- he sought rounding off of his PCB marks (49.7%) and also sought the benefit of a one time exemption from eligibility conditions granted by the Supreme Court in *Medical Council of India vs. Indian Doctors from Russia Welfare Associations &*

Ors. (2002) 3 SCC 696. The said judgment of the Supreme Court granted an exemption to those who were ineligible on any one ground and who had applied for registration prior to 15.03.2001. The petitioner in *Ravinder Singh* was granted relief on both counts. Although the Court did hold that the principle of rounding off would apply, it also found that the petitioner therein had in fact applied for registration prior to 15.03.2001 and was therefore, entitled to the benefit of the judgment of the Supreme Court. The later judgment of another learned Single Judge in *Jitender Singh vs. Govt. of NCT of Delhi* 2011 SCC Online Del. 566 (W.P. (C) 18076/2006, decided on 03.02.2011) also follows the line taken in *Ravinder Singh*.

14. Mr. Singhdev has cited several decisions of the Supreme Court to the effect that rounding off cannot be applied in respect of percentage of marks stipulated in eligibility conditions for admission to professional colleges. These include *Orissa Public Service Commission & Anr. vs Rupashree Chowdhary & Anr.* (2011) 8 SCC 108, *Bhanu Pratap vs. State of Haryana* (2011) 15 SCC 304, *Registrar, Rajiv Gandhi University of Health Sciences, Bangalore vs G. Hemlatha & Ors.* (2012) 8 SCC 568 and *West Bengal Joint Entrance Examination Board & Ors. vs. Sarit Chakraborty* (2015) 13 SCC 668.

15. *Rupashree Chowdhary* and *Bhanu Pratap* (decided by the same Bench on the same day) concerned appointments to judicial posts in Orissa and Haryana respectively. In *Rupashree Chowdhary*, the Supreme Court held as follows:-

10. *A bare reading of the aforesaid Rule would make it crystal clear that in order to qualify in the written examination a candidate has to obtain a minimum of 33% marks in each of the papers and not less than 45% of marks in the aggregate in all the written papers in the main examination. When emphasis*

is given in the Rule itself to the minimum marks to be obtained making it clear that at least the said minimum marks have to be obtained by the candidate concerned there cannot be a question of relaxation or rounding off. There is no power provided in the statute/Rules permitting any such rounding off or giving grace marks so as to bring up a candidate to the minimum requirement. In our considered opinion, no such rounding off or relaxation was permissible. The Rules are statutory in nature and no dilution or amendment to such Rules is permissible or possible by adding some words to the said statutory rules for giving the benefit of rounding off or relaxation.

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12. The entire record of the main written examination was also produced before us which indicates that there are also candidates who have got more marks than the respondent in the aggregate but have not been able to get 33% marks in each paper and have missed it only by a whisker. In case the contention of the counsel appearing for the respondent is accepted then those candidates who could not get 33% marks in each paper in the main written examination could and should have also been called for viva voce examination, which would amount to a very strange and complicated situation and also would lead to the violation of the sanctity of statutory provision.

13. When the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration.”

(Emphasis supplied.)

The judgment in Bhanu Pratap is on similar lines.

16. *G. Hemlatha* and *Sarit Chakraborty* have followed *Rupashree Chowdhary* while considering eligibility for admission to post graduates course in nursing and professional degree courses respectively. In *G. Hemlatha*, the Supreme Court held as follows:

“12. No provision of any statute or any rules framed thereunder have been shown to us, which permit rounding-off of eligibility criteria prescribed for the qualifying examination for admission to the PG course in MSc (Nursing). When the eligibility criteria is prescribed in a qualifying examination, it must be strictly adhered to. Any dilution or tampering with it will work injustice on other candidates. The Division Bench of the High Court erred in holding that the learned Single Judge was right in rounding-off of 54.71% to 55% so as to make Respondent 1 eligible for admission to the PG course. Such rounding-off is impermissible.”

(Emphasis supplied.)

Rupashree Chowdhary and *G. Hemlatha* have both been cited and followed in *Sarit Chakraborty*.

17. Counsel for the MCI has also drawn our attention to a Single Bench decision of the High Court of Punjab and Haryana in *Bavil Sidhu vs. State of Punjab* 2014 (4) SCT 489, in which rounding off for the purpose of admission in MBBS courses was not permitted in the absence of any stipulation in the regulation permitting the same. The learned Single Judge relied upon the Full Bench decision of the same Court in *Kuldip Singh vs. State of Punjab* (1997) 3 PLR 1, wherein the principle was held inapplicable in respect of the marks required to bring to make a candidate eligible for selection to a post.

18. In view of the pronouncements of the Supreme Court referred to above, we are of the view that the standards prescribed by the MCI are required to be strictly adhered to and there is no unreasonableness in the

MCI refusing to adopt a more flexible yardstick. No provision for rounding off is contained in the STR, ERR or the GMER. In any case where a cut-off has been prescribed, there will be unfortunately be people who are rendered ineligible by a very small margin. Those are hard cases, but they do not *per se* reveal arbitrariness in the prescribed requirements. The judgment in *Ravinder Singh* turned on its own facts, as it concerned a pre-2002 situation in which the candidate was eligible even without applying the principle of rounding off by virtue of the exemption directed by the Supreme Court in *Indian Doctors from Russia*.

C. Argument of parity

19. Although we have come to the conclusion that the petitioner is not entitled to the benefit of rounding off, Mr. Mehta has also argued that several similarly situated candidates have in fact being granted this benefit and submitted that denial of the same to the petitioner is discriminatory and violative of Article 14 of the Constitution. The MCI filed an additional affidavit in which this position was admitted and the following explanation was given:-

“4. It is submitted that prior to the judgment passed by the Hon’ble High Court of Punjab & Haryana in the case of *Bavil Sidhu vs. State of Punjab & Anr.* –CWP No. 15973/2014 dated 02.09.2014, the Eligibility Section of the answering respondent had been issuing Eligibility Certificates to candidates on the basis of the judgment dated 22.02.2010 passed by the Ld. Single Judge of this Hon’ble Court in the case of *Dr. Ravinder Singh vs. MCI & Anr.* - W.P.(C) No. 2877/2003.

5. It is submitted that the aforesaid judgment passed by the Hon’ble High Court of Punjab & Haryana in the case of *Bavil Sidhu vs. State of Punjab & Anr.* – CWP No. 15973/2014 dated 02.09.2014 was not within the knowledge of the Eligibility Section of the MCI which issues the Eligibility Certificates to the candidates till April, 2015. Therefore, Eligibility

Certificates had been issued inadvertently and in bonafide discharge of its duty, to certain candidates but after April, 2015 no Eligibility Certificates have been issued on the basis of the judgment dated 22.02.2010 passed by the Ld. Single Judge of this Hon'ble Court in the case of Dr. Ravinder Singh vs. MCI & Anr. – W.P.(C) No. 2877/2003.”

20. Although the said explanation offered by the MCI is not convincing, given the legal position outlined above, we are not inclined to grant the petitioner relief to which he is not otherwise entitled, simply on the basis of an argument of parity. An Article 14 claim is admissible only to secure relief to which a person is legally entitled and not to perpetuate illegality. The Supreme Court has so held in several judgments and the following reference to *Union of India vs. M.K. Sarkar* (2010) 2 SCC 59 is sufficient for the present purposes:

“25. There is another angle to the issue. If someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar benefit by others. This Court in a series of decision has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others....

26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot

approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

(Emphasis supplied.)

D. Regulation 4(4) of STR

21. In the absence of meeting the qualifying criteria for obtaining an eligibility certificate, the petitioner is also not entitled to sit for the screening test. This is clear from a plain reading of Regulation 4(2) of the STR. Ordinarily, under Regulation 3 of the STR, the screening test is a prerequisite for enrolment under the MCI or a State Medical Council. However, Regulation 4(4) provides an exception for persons who have secured undergraduate and post-graduate medical qualifications from certain enumerated jurisdictions (viz., Australia, Canada, New Zealand, United Kingdom, and United States of America) and are recognized for enrolment as medical practitioners in those countries.

22. The petitioner has challenged the validity of this Regulation, on the ground that it excludes equivalent Chinese qualifications from the exemption. We are unpersuaded by this argument. To challenge a classification under Article 14 of the Constitution, the petitioner must show that the classification is not based on any real and substantial differentiation and that it has no rational nexus with the objective sought to be achieved. These tests have been developed by the Supreme Court in several cases, and expressed in the following words in *S. Seshachalam v. Bar Council of T.N.*, (2014) 16 SCC 72:

“22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and

transactions by the legislature for the purpose of achieving specific ends. But classification must not be “arbitrary, artificial or evasive”. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions: firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.”

23. The petitioner has laid no material to establish that the classification of foreign degrees by their country of origin is not based on discernible criteria, or that such a classification does not bear a rational nexus to the objectives of the Regulations. *Prima facie*, it is permissible for an expert body to evaluate the standards of medical education and enrolment requirements in various overseas jurisdictions, and come to the conclusion that some of them are stringent enough to do away with the need for a separate screening test. The petitioner has not discharged his burden of proving to the contrary, or showing that Chinese medical qualifications, generally, are entitled to the same degree of deference as qualifications from the five enumerated countries. If the MCI has thought it fit to restrict the exemption to only five countries, this cannot be termed as arbitrary in the absence of strong evidence that the classification is unfounded. We therefore reject the petitioner’s challenge to the validity of Regulation 4(4) of the STR. For the same reasons, we cannot also accede to his alternative

claim for the benefit of the said provision. In any event, the petitioner does not appear to have even agitated such a claim in any representation to the MCI.

24. We are also conscious of the role of professional bodies, such as the MCI, in maintaining the standards of education and training in their respective fields. Several judgments of the Supreme Court, including *MCI vs. State of Karnataka* (1998) 6 SCC 131, *Dr. Preeti Srivastava vs. State of M.P. & Ors.* (1999) 7 SCC 120 (a Constitution Bench judgment) and *Sanjeev Gupta* (supra), have noticed the MCI's overarching responsibility for maintenance of quality medical education and professional standards. The qualifications and eligibility criteria prescribed by such an expert body, with important statutory functions, are not liable to be interdicted in judicial review, unless shown to be irrational or manifestly arbitrary. Neither the provisions of Regulation 4(4) of the STR, nor the decision of the MCI to enforce the standards prescribed by it strictly, in our view, suffer from any such vice.

E. Preliminary submissions

25. Although we have considered the petitioner's case on merits keeping in mind the nature of the relief sought, two preliminary points urged by Mr. Singhdev also deserve consideration. The first argument is that the petitioner was originally denied an eligibility certificate on 15.04.2006 but has approached the Court only on 26.05.2015 i.e. more than 9 years thereafter. We agree that such considerable delay, particularly in a matter which is of evident significance to the petitioner's career, cannot be overlooked. Having proceeded to pursue his course in China without obtaining the eligibility certificate as required under the ERR prior to taking admission, the petitioner bore the risk of the situation which he now faces.

He cannot in any event claim any equitable consideration after 2006 when he was first put on notice about the MCI's views in respect of his qualifications. The subsequent applications made by him do not improve the situation as the filing of repeated representations cannot justify such long delay. In this connection, reference may be made to the judgments of the Supreme Court in *Rabindranath Bose & ors. vs. Union of India & Ors.* (1970) 1 SCC 84 (paragraph 34), *State of Orissa vs. Pyarimohan Samantaray & Ors.* (1977) 3 SCC 396 (paragraph 6) and *Udai Shankar Awasthi vs. State of Uttar Pradesh & Anr.* (2013) 2 SCC 435 (paragraph 43 - 45).

26. The second preliminary argument is that the petitioner's misstatement to the effect that he had secured 50% marks in PCB in his 2010 application is also sufficient ground to deny relief. Although the petitioner's lack of candour on a contentious point is certainly unsatisfactory, we are not inclined to deny relief only on this ground in view of the fact that he had accurately disclosed his individual marks in the three subjects and the sum thereof.

Conclusion

27. For the reasons aforesaid, the petitioner is not entitled to the relief claimed. The writ petition is therefore dismissed alongwith pending applications, but with no order as to costs.

PRATEEK JALAN, J.

S. RAVINDRA BHAT, J.

FEBRUARY 26, 2019

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