



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 28th July, 2022

Pronounced on: 11th October, 2022

+ W.P.(C) 7615/2022

DR. RASHI SATYANARAYAN SONI & ORS.Petitioners

Through: Mr. Apoorve Karol, Ms. Mithu Jain
and Mr. Lakshay Sharma,
Advocates.

versus

UNION OF INDIA & ORS. ...Respondents

Through: Ms. Nidhi Raman, CGSC with
Mr. Zubin Singh, Advocate for R-
UOI.
Mr. Satvik Varma, Senior Advocate
with Mr. Manish Dhir and Ms.
Drishti Harpalani, Advocates for R-
4.
Mr. T. Singhdev, Ms. Raman Preet
Kaur, Ms. Michelle Biakthansangi
Das, Mr. Abhijit Chakravarty,
Mr. Bhanu Gulati and Ms.
Sumangla Swami, Advocates for R-
2.
Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Ms. Kunjala Bhardwaj,
Ms. Manmeet Kaur Sareen and
Ms. Srirupa Nag, Advocates for R3.

+ W.P.(C) 5328/2021 & CM APPLs. 16403/2021, 19269/2022

DR. SHINDE MAHESH PRAKASH & ORS.Petitioners

Through: Mr. Apoorve Karol, Ms. Mithu Jain
and Mr. Lakshay Sharma,



Advocates.

versus

UNION OF INDIA & ORS.

...Respondents

Through: Mr. Satvik Varma, Senior Advocate with Mr. Manish Dhir and Ms. Drishti Harpalani, Advocates for R-4.
Mr. T.P. Singh, Sr. Central Govt. Counsel for R-1.
Mr. T. Singhdev, Ms. Raman Preet Kaur, Ms. Michelle Biakthansangi Das, Mr. Abhijit Chakravarty, Mr. Bhanu Gulati and Ms. Sumangla Swami, Advocates for R-2.
Mr. Kirtiman Singh, Mr. Waize Ali Noor, Ms. Kunjala Bhardwaj, Ms. Manmeet Kaur Sareen and Ms. Srirupa Nag, Advocates for R3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.:

1. The Petitioners are qualified doctors who are either pursuing or have completed fellowship courses in various fields [*hereinafter*, “**FCPS courses**”] offered by Respondent No. 4 – College of Physicians and Surgeons of Mumbai [*hereinafter*, “**CPS Mumbai**”]. They impugn the policy decision of Respondent No. 1 – Ministry of Health and Family



Welfare, Union of India [**“MoHFW”**] that holds FCPS courses are not equivalent to MS/MD degrees. This decision renders them ineligible for various post MD/MS examinations, such as Diplomate of National Board final examination [*hereinafter*, **“DNB examination”**] and National Eligibility cum Entrance Test-Super Speciality [**“NEET SS”**] conducted by Respondent No. 3 – National Board of Examinations [**“NBE”**].

2. Both the petitions raise identical grounds of challenge and seek similar reliefs, and thus, are being disposed of by way of this common order.

3. Since the impugned policy decision shall be discussed in detail while dealing with contentions of the parties, at this juncture, for contextual understanding, a brief introduction to the controversy would suffice.

INTRODUCTION TO THE CONTROVERSY

4. CPS Mumbai, an institute established under the Societies Registration Act, 1860 offers certain post MBBS medical fellowship courses that stand recognised since 1954, by way of Government notifications. Over the years, recognition status of these courses has remained shrouded with uncertainty and controversies, which have often engaged several High Courts. In this regard, it is pertinent to note that *vide* notification dated 22nd January, 2018, MoHFW awarded status of ‘recognised medical qualifications’ to certain FCPS courses offered by CPS Mumbai *w.e.f.* the specified dates for each course. Thereafter, on 30th



April, 2021, MoHFW sent a letter *bearing* No. C.18018/11/2021-MEP to the Executive Director of NBE [*hereinafter*, ***“impugned letter/ policy decision”***] clarifying that the FCPS qualifications are recognised and registrable medical qualifications for the purpose of Indian Medical Council Act, 1956 [***“IMC Act”***] and the National Medical Commission Act, 2019 [***“NMC Act”***], but are not equivalent to either MD or MS.

5. Petitioners are aspirants of DNB examination, which, if successfully cleared, leads to award of Diplomate of National Board qualification in approved specialty. In order to appear for DNB examination, candidates must fulfil the eligibility criteria set out by NBE *viz.* undergo DNB training from NBE accredited institute, or possess post graduate degree (MD/MS) from recognised university. For June 2021 session, NBE issued an information bulletin for DNB examination [*hereinafter*, ***“information bulletin of 2021”***], clause 4.3.2 whereof stipulates that candidates possessing FCPS qualifications are not eligible to apply till such time its equivalence with their counterpart MD/MS qualifications is confirmed by the Government of India. Later, pursuant to the impugned letter, clause 4.3.2 of the information bulletin for June 2022 session [*hereinafter*, ***“information bulletin of 2022”***] declared FCPS course candidates to be ineligible for appearing in DNB examination.

6. As the Petitioners do not possess MD/MS degrees, and have also not undertaken DNB training, they have been rendered ineligible for said examination. In such circumstances, the decision of de-recognition of equivalence of FCPS courses *vis-a-vis* MD/MS courses is impugned along



with the eligibility condition prescribed by NBE under clause 4.3.2 of the aforesaid information bulletins.¹

CONTENTIONS

On behalf of Petitioners

7. Mr. Apoorve Karol, counsel for Petitioners, raises following grounds of challenge to the impugned letter and clause 4.3.2 of information bulletins:

7.1. FCPS courses have historically been considered to be at par with MD/MS degrees. FCPS qualified candidates similarly placed as Petitioners, have all-throughout been allowed to appear for DNB examination. Respondents have deviated from past policy and practice without informing or consulting the stakeholders *i.e.*, students who are either pursuing the course, or have completed the same and are desirous of appearing for DNB examination. Such students, including the Petitioners, who on the strength of the earlier pattern adopted by NBE and MoHFW, enrolled in FCPS courses and applied for DNB examination, are now unfairly and arbitrarily deprived of an opportunity to be DNB qualified specialists.

7.2. The impugned letter simply states that FCPS courses shall not be deemed equivalent to MD/MS courses without assigning any reason thereto. Petitioners' interests have been adversely affected by such a declaration; passing an order sans discussion is unjust, unreasonable and therefore, liable to be set-aside.

¹ Clause 4.3.2 of the information bulletin of 2021 is challenged in W.P.(C) 5328/2021; whereas in W.P.(C) 7615/2022, clause 4.3.2. of the information bulletin of 2022 is assailed.



- 7.3. Without prejudice and in addition, the policy decision of MoHFW must not be applied retrospectively to candidates who had joined the FCPS courses prior to 30th April, 2021 (*i.e.*, date when the impugned letter was issued) and further, were at no juncture, consulted or informed of the intention of Respondents.
- 7.4. Several Petitioners, including Petitioner No. 11 in W.P.(C) 5328/2021, were permitted to sit for DNB examination but their results have been withheld due to the impugned letter. Such actions of Respondents have gravely prejudiced Petitioners, who, after having spent considerable years in pursuing their respective FCPS courses, have been rendered incapable of acquiring DNB certification.
- 7.5. The letter dated 20th November, 2020 whereby Respondent No. 2 – National Medical Commission [**“NMC”**] opined that there is no notification in respect of equivalence of FCPS courses with MD/MS courses, deals with FCPS (Midwifery and Gynaecology) course only.
- 7.6. NBE continuously sought clarifications from NMC or MoHFW *qua* issue of equivalence because it did not want to take any policy decision on its own.
- 7.7. Although it is true that FCPS courses are not recognised as a qualification for the purpose of employment as teaching faculty, even then, a student can apply for DNB course by obtaining additional qualifications *i.e.*, a two-year diploma course and then appearing for the Diplomate of National Board Post Diploma Centralised Entrance Test [**DNB-PDCET**] examination conducted by NBE. The issue pertaining to teaching qualification has no bearing on the question of equivalence, and therefore, comparison drawn is misconceived and



erroneous.

- 7.8. The decision of NBE is in complete contravention of judgements passed by the Apex Court.² The interests of students should be protected, and they should not be unjustly deprived of the benefit of equivalence considering that FCPS courses were recognised by the Government at the time of their enrollment.
- 7.9. Reliance is also placed upon the judgement passed by Division Bench of the High Court of Bombay in *Dr. Hindustanwala Mohammed Adnan Mohd. Mustafa v. Union of India*³ wherein the Court observed that persons who had obtained FCPS degree prior to de-recognition of FCPS courses *vide* gazette notification dated 02nd December, 2009 were not disqualified from appearing in the DNB examination.
- 7.10. A writ petition arising from similar circumstances,⁴ and impugning prior information bulletin published by NBE was allowed in favour of the Petitioners therein, holding them eligible for applying for DNB examination.

On behalf of CPS Mumbai

8. Mr. Satvik Varma, Senior Counsel for CPS Mumbai, submits that the decision taken *vide* impugned letter must not be applied retrospectively hampering the interests and careers of doctors who had enrolled prior thereto. Retrospective application of the impugned letter is highly arbitrary

² *Suresh Pal and Ors. v. State of Haryana and Ors.*, (1987) 2 SCC 445 and *Anita Kishanrao Videkar v. Union of India*, W.P. No. 5343/2018 dated 24th February, 2021.

³ W.P.(L) No. 1711/2012 dated 28th August, 2012.

⁴ W.P. (C) 4252 of 2021 titled *Umang Litoriya and Ors. v. Union of India and Ors.*



and against the principles laid down by the Constitutional Bench of the Supreme Court in *CIT v. Vatika Township (P) Ltd.*⁵ Reliance is also placed upon the judgements in *Punjab State Coop. Agricultural Development Bank Ltd. v. Coop. Societies*,⁶ and *Himachal Pradesh State Electricity Regulatory Commission and Anr. v. Himachal Pradesh State electricity Board*,⁷ to contend that the decision of de-recognition of equivalence of FCPS courses must not be applied retrospectively.

On behalf of NBE

9. Mr. Kirtiman Singh, counsel for NBE, controverts the above and makes the following submissions:

- 9.1. Clause 4.3.2 of information bulletin of 2021 expressly provides that candidates possessing FCPS qualifications are ineligible to apply till the question of equivalence of such qualifications is decided by MoHFW. Petitioners who appeared for DNB examination in September 2020 were only provisionally permitted to appear as intimated *vide* e-mail communication dated 22nd September, 2020 sent by NBE to concerned candidates. Petitioners have deliberately concealed this fact from the Court and as such, petitions deserve to be rejected.
- 9.2. The governing body of NBE has, on several occasions, sought clarity on the issue of equivalence from NMC as well as MoHFW. In light of the fact that MoHFW has now decided that FCPS qualifications are no longer equivalent to MD/MS degrees,

⁵ (2015) 1 SCC 1.

⁶ (2022) 4 SCC 363.

⁷ (2014) 5 SCC 219.



Petitioners cannot be permitted to appear for DNB examination, especially when they were made aware of the provisional status of their candidature.

- 9.3. NBE is an autonomous body empowered to lay down the standards and eligibility criteria for medical education in India. It has the right to change their guidelines and/or existing practices/norms, which shall be applicable to candidates.
- 9.4. Petitioners' claim based on promissory estoppel or legitimate expectation is wholly misconceived as they are not pursuing any course from NBE, but are only appearing for an examination that leads to award of DNB qualification.

On behalf of NMC

10. Mr. T. Singhdev, counsel for NMC, makes the following averments:
- 10.1. After much deliberations and considering the quality and standard of training provided by CPS Mumbai — NMC recommended MoHFW to de-recognise FCPS courses. CPS Mumbai is only a registered society under the Societies Registration Act, 1860 and does not qualify as a recognised university/ medical college.
- 10.2. The High Court of Bombay is hearing a batch of petitions [W.P. No. 6751/2018 titled ***Dr. Priya P. Shah v. Union of India***], wherein similar issues, as urged in the present petitions, are pending adjudication. In the said case, *vide* order dated 13th July, 2018, the Court has expressed preliminary views against recognition of FCPS courses.
- 10.3. The question of equivalence of FCPS courses with other medical



courses is exclusively within the domain of experts in the concerned fields. In this regard, reliance is placed on judgements passed in *Anand Yadav v. State of Uttar Pradesh*,⁸ *Zahoor Ahmed v. Sheikh Imtiyaz Ahmed*,⁹ and *Deputy Director of Public Instruction and District Recruitment Authority v. Shaik Maula*.¹⁰

10.4. Petitioners were all-throughout aware that they are ineligible to appear for DNB examination as the notification of 2018 contains a note at the bottom stipulating that qualifications awarded by CPS Mumbai cannot be treated as recognised medical qualifications for the purpose of appointment as teaching faculty.

On behalf of MoHFW

11. Mr. T.P. Singh, Sr. Government Counsel, supports the submissions made by NMC and NBE. In addition, he places reliance on the judgement of the Supreme Court in *Puneet Sharma and Ors. v. Himachal Pradesh State Electricity Board Ltd. and Anr.*¹¹ to argue that the presumption against retrospective application is not applicable to clarificatory or declaratory statutes.

ANALYSIS

12. It must be noted that Mr. Karol had urged that the fundamental issue in the present petitions pertains to retrospective application of the impugned decision and he argued that Petitioners are entitled to succeed,

⁸ AIR 2020 SC 5383.

⁹ (2019) 2 SCC 404.

¹⁰ (2006) 12 SCC 370.

¹¹ 2021 SCC OnLine SC 291.



irrespective of determination on the issue of equivalence of FCPS courses with MS/MD degrees. Although Mr. Karol may have constrained the scope of his challenge, Petitioners' written submissions are expansive and substantially assail the decision of equivalence. Nonetheless, in the opinion of the Court, both issues are interconnected. The question of retrospective application of the impugned letter cannot be adjudicated *de hors* the issue of equivalence of FCPS courses with MS/MD degrees, pertinently since the impugned disqualification/ eligibility criteria in the information bulletins is premised on the issue of equivalence and furthermore, is to apply prospectively. In light of the fore-going, following issues arise for consideration: (a) Whether the policy decision/ impugned letter in respect of equivalence of FCPS courses with MS/MD qualifications suffers from the vice of arbitrariness; and (b) Whether the said policy decision should be applied prospectively.

Impugned Decisions

13. Before delving into the contentions noted above, for ready reference, the impugned decisions in controversy, are taken note of.

14. Clause 4.3.2 of the information bulletins of 2021 and 2022 that preclude Petitioners from appearing in DNB examination, read as under:

Information bulletin of 2021-

“

- x - x - x

4.3.2.MD/MS Qualified Candidates:

- Candidates who have passed the final examination, on or before 31st December 2020, leading to the award of a Post Graduate Degree (MD/MS), from an Indian University, which is duly recognized as per provisions of the repealed Indian Medical Council Act 1956/National Medical Commission (NMC) Act, 2019 can apply for the DNB Final examination in the same broad specialty.



• As per decision of the Governing Body, NBE taken in its meeting held on 24.12.2020, candidates possessing **FCPS qualifications awarded by the College of Physicians and Surgeons, Mumbai are not eligible to apply for DNB Final Examinations till such time equivalence of FCPS qualifications with their counterpart MD/MS qualifications is confirmed by the Govt of India.**

- x - x - x

[Emphasis supplied]

Information bulletin of 2022-

“

- x - x - x

4.3.2.MD/MS Qualified Candidates:

• Candidates who have passed the final examination, on or before 31st March 2022, leading to the award of a Post Graduate Degree (MD/MS), from an Indian University, which is duly recognized as per provisions of the National Medical Commission (NMC) Act, 2019 and the first schedule of the IMC Act can apply for the DNB Final examination in the same broad specialty.

• As per the MoHFW letter No. C.18018/11/2021-MEP dated 30.04.2021, the FCPS qualifications awarded by the College of Physicians and Surgeons, Mumbai are not equivalent to either MD or MS courses. Accordingly, **candidates possessing FCPS qualifications awarded by the College of Physicians and Surgeons, Mumbai are not eligible to apply for DNB Final Examinations.**

- x - x - x

[Emphasis supplied]

15. The clarification supplied by MoHFW through the impugned letter, reads as under:

“To,

The Executive Director
National Board of Examinations
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi – 110029.

Nirman Bhavan, New Delhi

Dated the 30th April, 2021

Subject: Equivalence of CPS qualifications to MD/MS/PG Diploma qualifications – reg.

Sir,

I am directed to refer to letters No. NBE/EDO/2020/429 dated 16.09.2020 and No. NBE/EDO/2021/2012 dated 06.04.2021 on the subject mentioned above and to say that the matter of equivalence of CPS qualifications to MD/MS/PG Diploma qualifications has been examined in the Ministry and the following is hereby conveyed:

i. The DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS (Derm.), FCPS (Mid. & Gyn.) and FCPS (Ophth.) are the only recognized



CPS courses at present.

ii. The aforementioned FCPS qualifications awarded by the CPS, Mumbai are recognized medical qualifications for the purposes of the erstwhile Indian Medical Council Act, 1956 and also for the purposes of the National Medical Commission Act, 2019. These qualifications are registrable qualification for practice, however, the same are not equivalent to either MD or MS courses.

iii. The Diploma qualifications DPB, DGO and DCH - awarded by the CPS, Mumbai are equivalent to their corresponding other recognized Diploma qualifications.”

[Emphasis supplied]

Tracing the history of recognition of FCPS courses

16. CPS Mumbai was established as a society under the Societies Registration Act, 1860 in the year 1912 and is not a recognised university *per se* as per extant laws. The said institute offers three years' FCPS courses in various fields which, prior to the impugned letter, entitled them to appear for post-graduate examinations such as NEET SS and DNB examination, leading to award of specialisation degrees in concerned branches of medicine. The recognition of FCPS courses with MS/MD degrees has a convoluted history which controversy arose as early as 1997, when the Medical Council of India [“MCI”] recommended withdrawal of recognition to various diploma courses granted by CPS Mumbai. Several rounds of discussions took place over the years culminating into a gazette notification dated 2nd December, 2009 published by MoHFW whereby various FCPS courses were first de-recognised. However, upon representations made in this regard, MoHFW issued a corrigendum on 3rd February, 2010 clarifying that the above-stated de-recognition shall come into effect prospectively from 2nd December, 2009. Consequently, FCPS courses stood deleted from the First Schedule of IMC Act.



17. Later, after about nine years, MoHFW revisited the issue and re-inserted 6 FCPS courses in the First Schedule *vide* notification dated 22nd January, 2018 and all such FCPS courses came to be recognised as valid medical qualifications *w.e.f* 30th April, 1954. However, even after passing of this notification, MCI maintained its stand regarding recognition of FCPS courses, as evident from various communications placed on record, including letter dated 20th November, 2020 sent by NMC to NBE in response to its letter of 16th September, 2020 stating that “*FCPS (Midwifery & Gynecology) qualification awarded by College of Physicians and Surgeons, Mumbai, are registrable for practice but there is no notification with respect to their equivalence to MD/MS.*” In light thereof, the Governing Body of NBE, in its meeting on 24th December, 2020, decided to not permit candidates possessing FCPS qualifications from appearing in forthcoming sessions of DNB examination and results of such candidates who had previously appeared were withheld, till the time a final view was taken by MoHFW on this issue. The impugned letter was sent in response to repeated queries of NMC and NBE from MoHFW with regard to the issue of equivalence.

Legality of Impugned letter/ Policy decision

18. Mr. Karol has emphatically asserted that since FCPS qualifications were hitherto considered equivalent to MS/MD degrees, MoHFW should not be permitted to deviate from past practice and de-recognise the established standard of equivalence by way of the impugned letter. He has assailed the policy decision citing arbitrariness, arguing that there was no legitimate basis for arriving at this decision. In that light, legality of the



impugned decision is scrutinized on the anvil of the applicable provisions contained in the IMC Act.¹²

19. Section 11 of IMC Act deals with grant of recognition to medical qualifications awarded by medical universities or institutes in India, and reads as under:

“11. Recognition of medical qualifications granted by Universities of medical institutions of India —

(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.”

20. In terms of aforementioned provision, power to declare a medical qualification as a ‘recognised medical qualification’ by way of inclusion in First Schedule to the IMC Act vests with the Central Government. The effect of recognition to a medical qualification has been explained in Section 15 of the Act, in following terms:

“15. Right of persons possessing qualifications in the Schedules to be enrolled—

(1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register

(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register, —

¹² Since notification dated 22nd January, 2018 was passed under the IMC Act, and no contention has been raised by parties to the contrary, the relevant provisions of IMC Act are being discussed instead of the NMC Act.



(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority.

(b) shall practice medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner.

(d) shall be entitled to give evidence at any inquest or in any Court of Law as an expert under section 45 of the Evidence Act, 1872 (1 of 1872) or on any matter relating to medicine[...]”

[Emphasis supplied]

21. Therefore, it emanates that once a medical course has been recognised by way of a notification by the Central Government, it shall be deemed to be a sufficient qualification for the purpose of enrolment on any State Medical Register (*i.e.*, list of medical practitioners). However, grant of recognition and equivalence to a medical qualification are two different aspects. Several FCPS courses are recognised medical qualifications as per extant law and there is no cavil to that extent; but, recognition of FCPS courses does not necessarily imply equivalence with MS/MD degrees. Neither the Act, nor the notifications indicate that recognised medical courses are to be considered equivalent to MD/MS degrees. Petitioners’ submission that they sought admission into FCPS courses considering the equivalence extended by the notification of 2018 is thus, misconceived. MoHFW has not passed a substantive order by way of the impugned letter, but has only reiterated the position that already existed in light of said notification. It has clarified that persons possessing FCPS courses qualifications shall not be eligible for teaching and since it was merely a clarification in response to NBE’s queries, there was no requirement for a public notification to be issued as in the case of de-recognition in



terms of Section 11 of IMC Act. MoHFW has not flouted any legal provision by stating that FCPS courses are no longer equivalent to MS/MD degrees since recognition of these courses still remains intact, and such qualifications are registrable for the purposes of IMC Act. It is the equivalence that has been revoked in light of the nature of education imparted by CPS Mumbai as well as the attached disqualification for the purposes of teaching, that shall be discussed hereinafter. Therefore, as it stands today, persons possessing FCPS courses qualifications are permitted to, *inter alia*, work as doctors or medical consultants, but cannot be said to be possessing qualifications equivalent to MD or MS.

22. Petitioners have also asserted that the impugned policy decision was taken by MoHFW, and not NMC or NBE. It must be noted that under the scheme of both IMC Act and NMC Act, courses offered by various medical colleges are granted recognition by the Central Government, and therefore, the Court is unable to agree that MoHFW is not the competent authority to take such a decision when in fact, the legislation endows it with power to deal with issues pertaining to recognition and de-recognition.

23. There is no clarity *qua* the origin of the decision to consider FCPS courses equivalent to MS/MD degrees. The plea of continuance of a past practice, which is not founded on any statutory provision(s), cannot be sought particularly in absence of any demonstrable legal rights. Status of equivalence of FCPS courses is determined by the policy decision taken by MoHFW in consultation with MCI/ NMC, which was eventually



clarified by way of issuance of impugned letter. The impugned decision is not arbitrary but based on several crucial factors, including level of training and education *apropos* prevailing standards, discussed later in the judgement. Neither any statutory basis has been expounded by Petitioners for treatment of FCPS courses at par with MS/MD degrees, nor have they been able to establish capriciousness and illegality in Respondents' actions. In absence thereof, Respondents cannot be said to have acted contrary to the IMC Act or the aforesaid notification, and no good reason is found to interfere with the impugned policy decision.

24. Petitioners have also challenged the policy decision on the ground that it has been taken through a letter addressed to the Executive Director of NBE, without assigning any reasoning therein. The Court does not find any merit in this contention as well, as the impugned letter was sent by MoHFW in response to recurring/ multiple representations made by NMC and NBE seeking clarity *qua* equivalence of FCPS qualifications. Since NMC had conveyed to NBE that there is no notification/ provision dealing with equivalence of FCPS courses with MD/MS degrees, NBE proceeded to seek clarity on the issue from MoHFW. In response to NBE's communications dated 16th September, 2020 and 06th April, 2021, MoHFW sent the impugned letter and clarified that FCPS courses are recognised medical qualifications but cannot be considered to be equivalent to MS/MD degrees. This can be seen from a bare reading of the first paragraph of the afore-extracted impugned letter. MoHFW's clarification has put the controversy surrounding the status of equivalence of FCPS qualifications to rest.



Petitioners are attempting to interpret the impugned letter *de hors* the contextual background, which cannot be the basis to strike down said policy decision.

25. The discussion would be incomplete without taking note of antecedent facts which exhibit Respondents' well-founded hesitation in granting equivalence to FCPS courses. The objection for treating FCPS courses commensurable with MS/MD degrees is founded on the status and persona of CPS Mumbai itself. The said institute is neither affiliated to any recognised university nor is recognised/ deemed under the University Grants Commission Act, 1956. NMC, after inspection and substantial deliberation, had concluded that CPS Mumbai does not have a full-time teaching faculty, adequate infrastructure and other training facilities such as clinical material, equipment and laboratory facilities, that are prerequisite for grant of quality medical education. Mr. Singhdev had argued that CPS Mumbai provided admission in FCPS courses solely on the basis of MBBS degrees, which is violative of the Postgraduate Medical Education Regulations, 2000 whereunder, admissions to postgraduate level courses such as MS or MD are mandatorily required to be done on the basis of prospective candidate's performance in merit-based national level admission tests. Reliance was also placed on a letter dated 31st March, 2021 addressed to MoHFW, where NMC expressed concerns over quality of training provided by CPS Mumbai and highlighted the lack of supporting evidence to show that persons possessing FCPS qualifications contributed substantially towards the improvement of rural healthcare infrastructure, which is the



need of the hour. It is for the above-stated reasons that Respondents favoured de-recognising equivalence of FCPS courses with their counterparts viz. MS/MD degrees.

26. Judicial review of expert statutory body's evaluation of performance and quality of education is limited. Medical education is a concern of national importance, and if a competent body has ascertained that FCPS courses run by CPS Mumbai do not meet the rigour of monitoring/ supervision of NMC, as compared to other approved institutions, the Court cannot apply its own evaluation criteria for determining efficiency of an institute on the touchstone of extant rules, regulations and industry-standards, and thereby substitute its own opinion in place of specialist/experts' decisions.¹³ Training by proficient personnel in medical and allied fields for development of the healthcare system in the country is of paramount importance. The bare objections of unreasonableness raised by Petitioners cannot succeed when pitted against Respondents' rationality *vis-a-vis* the impugned policy decision.

27. Another integral aspect that merits mention is the bar on FCPS qualified professionals to teach medicine. In the notification of 2018, following conditions were added by way of a note:

"Note: - (i) All the admissions should be through NEET PG and centralised counselling and as per Government policy from time to time.

*(ii) **The FCPS qualifications shall not be treated as a recognised medical qualification for the purpose of teaching.**"*

[Emphasis supplied]

¹³ See: *Dr. J.P. Kulshretha and Ors. v. Chancellor, Allahabad University and Ors.*, (1980) 3 SCC 418; *Ashutosh Bharti and Ors. v. The Ritanand Balved Education Foundation and Ors.*, W.P.(C) 19809/2004 dated 14th January, 2005.



28. The consequence of the above is that persons who have completed FCPS courses are prohibited from teaching medical qualifications in any institute/ university in India. The existence of this condition also partook in issuance of the impugned policy decision. In order to teach medical courses in India, a person must possess MBBS and MS/MD degrees. Alternatively, in terms of the amended Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 as well as Section 37(2) of the NMC Act, DNB qualified professionals are competent to teach medicine in India. If FCPS courses are considered equivalent to MS/MD degrees and/or such candidates are permitted to appear for DNB examination, as a natural corollary, FCPS candidates would become qualified to be appointed as teaching faculty. In such a situation, the disqualification introduced through note to notification of 2018 would be defeated as candidates would bypass their ineligibility and work as teaching faculty.

29. *Insofar* as setting-aside clause 4.3.2 of concerned information bulletins is concerned — the sole ground of challenge is that prior to 2021, candidates possessing FCPS qualifications were allowed to write DNB examination. This alone, however, does not merit setting-aside a prescribed eligibility condition *viz.* clause 4.3.2. NBE is the principal authority that awards Diplomate of National Board certification upon clearing DNB examination and in that capacity, NBE is empowered to determine and regulate the eligibility criteria. Decision of the Governing Body to bar FCPS qualified candidates from appearing in DNB



examination, till such time the issue of equivalence remains undetermined, was necessitated considering uncertainty revolving around the status of FCPS courses as well as the fact that NBE had to frequently recall provisional pass certificates of FCPS course candidates. Since MoHFW finally opined that FCPS courses cannot be equated to MS/MD degrees, NBE acted in accordance with clause 4.3.2 of information bulletins as well as extant laws, and prohibited concerned candidates in the interest of the medical profession.

30. It must also be stressed that Petitioners have not raised any contentions, presented facts/ data or placed material on record in favour of continuance of practice of equivalence. They have not made out any case in that regard rather, are solely relying on past practice of Respondents which, in the opinion of the Court, is not sufficient to quash the impugned letter or condition in clause 4.3.2 of the information bulletins. Every institute providing medical education must maintain standards of facilities and training commensurate with the growing need for quality medical professionals in the country. In order to ensure the same, NMC [*erstwhile* IMC], a statutory body, sets out guidelines pertaining to basic requirements such as adequate financial resources, staff, equipment, accommodation and proper training for medical institutes functioning in the country. Since a competent body of professionals, after due consideration, opined that FCPS courses are not equivalent to MS/MD degrees, there is hardly any scope of interference. Courts have time and again held that professional and academic bodies are fully competent to change and modify their eligibility criteria to ensure maintenance of standards of education, and



merely because the convention/ practice was different in the past years, that itself, does not *ipso facto* invalidate any such change.¹⁴

Examining cited case laws

31. Petitioners have strongly relied upon the decision of a coordinate bench of this Court in ***Umang Litoriya*** (*Supra*). In that case, certain candidates challenged the disqualification created by the information bulletin for DNB-PDCET examination in respect of candidates holding diplomas from CPS Mumbai. During the course of proceedings, MoHFW was directed to file an affidavit explaining its stand regarding recognition of said diplomas in light of inconsistency in views of NMC and MoHFW. MoHFW then placed the impugned letter on record and accordingly, Petitioners therein who possessed DPB, DGO and DCH diploma qualifications from CPS Mumbai were permitted to appear for DNB-PDCET examination. The impugned letter categorically states that “*Diploma qualifications DPB, DGO and DCH - awarded by the CPS, Mumbai are equivalent to their corresponding other recognized Diploma qualifications*” and in terms thereof, Petitioners therein were allowed to sit for concerned examination; however, position of FCPS courses is just the opposite. This Court had not adjudicated or expressed any views upon the issue of equivalence and disposed of the petition in terms of the impugned letter whereas, in the instant cases, the impugned letter itself has been challenged. Since the issues urged in present cases are fundamentally different as in ***Umang Litoriya*** (*Supra*), this case cannot be cited as a

¹⁴ See: ***Rajat Duhan and Ors. v. All India Institute of Medical Sciences and Ors.***, (2019) SC OnLine Del 11437 and ***Ashwin Prafulla Pimpalwar v. State of Maharashtra***, AIR (1992) Bom 233.



precedent and is inapplicable to the facts of the present cases.

32. Similarly, reliance on judgement in *Dr. Hindustanwala Mohammed Adnan* (*Supra*) is erroneous since Petitioner's grievance therein related to non-issuance of his degree certificate in respect of DNB examination in 'General Surgery'. NBE withheld said certificate as Petitioner therein had failed to furnish proof of completion of MD/MS or equivalent course by the last date of submission of application form. The High Court of Bombay directed NBE to issue a degree certificate considering that Petitioner therein was permitted to appear in both stages of DNB examination by NBE, despite deficiency in his application. In paragraph 5 of said judgement, the Court expressly noted that equivalence of FCPS course completed by Petitioner therein with MS/MD degrees is not in dispute. This judgement, therefore, also does not further Petitioners' case as it does not deal with the question of equivalence.

The question of retrospective application

33. It has been argued that notwithstanding non-recognition of equivalence of FCPS courses — impugned policy decision must not be given retrospective application so as to prejudice candidates who sought admission in FCPS courses, relying on past practice of Respondents. However, since the impugned letter merely clarified the position that was already in force since 22nd January, 2018, the question of retrospective application does not arise. Declaring impugned policy decision to have prospective application and permitting Petitioners to appear for DNB examination, would be beyond the ambit of judicial review. Under the



scheme of IMC Act and general practice, MoHFW is the final authority to decide how conditions introduced by notification of 2018 are to operate. Even otherwise, it is settled law that a declaratory or clarificatory rule operates from a prior date covering antecedent events since it merely elucidates the initial intent of the enactment.¹⁵ As discussed hereinbefore, impugned letter was sent by MoHFW to clarify the position *qua* operation of notification of 2018, and thus, it shall be deemed to apply to all candidates, including Petitioners, who seek to enjoy the benefit of equivalence of their courses with MS/MD degrees and appear for postgraduate level professional examinations.

34. That apart, NBE itself has reserved an absolute right to alter, amend or modify its guidelines under the information bulletin.¹⁶ From a perusal of stipulations contained in previous years' information bulletins issued by NBE for DNB examinations, it manifests that NBE cautioned prospective candidates that they shall not be entitled to claim any right whatsoever from past schedules, policies or guidelines of NBE. It would not be in the interest of either the candidates or the medical profession to restrict this power of NBE. It can also not be said that NBE has usurped its jurisdiction or power, that would warrant quashing of impugned clause 4.3.2 of the information bulletins.

35. As regards those Petitioners who have already appeared in DNB examination in the year 2020 and their results have been withheld, there is

¹⁵ *University of Kerala and Ors. v. Merlin J.N. and Anr.*, S.L.P. Nos. 12591-12596/2020 dated 17th August, 2022.

¹⁶ Clause 2.18 and Clause 2.19 of information bulletins.



merit in NBE's contentions that such Petitioners were only provisionally permitted to appear in the examination, a fact which was communicated to them not only by way of the information bulletin for the year 2020, but also by e-mail communication dated 22nd September, 2020 in following terms:

"Dear Candidate,

This is with reference to your application for DNB Final (Theory) Examination June 2020 session.

*You have been **provisionally allowed to appear** in the aforementioned examination purely on provisional basis. Please be apprised that the appearance in examination shall be provisional subject to receipt of clarification awaited from the Govt of India and Medical Council of India regarding equivalence of FCPS qualifications with the corresponding MD/MS counterparts.*

The permission granted for appearance shall not allow the candidates to exercise any legal rights in their favour for considering their candidature and/or declaration of result and/or appearance in practical examination in case the clarifications received from Gol and/or MCI do not confirm the equivalence of FCPS with corresponding MD/MS courses..."

36. Therefore, it is abundantly clear that concerned Petitioners' candidatures were only provisional and no relief can be claimed by them since status of equivalence has now been clarified.

37. Lastly, as regards Petitioners' plea of legitimate expectation, this Court in ***Dr. Divyesh J. Pathak and Ors. v. National Board of Examinations and Anr.***¹⁷ has held that the principle of legitimate expectation is inapplicable to matters pertaining to education and as such, Respondents cannot be compelled to continue recognising equivalence of

¹⁷ W.P.(C) 3005/2020 dated 26th May, 2020.



FCPS courses with MS/MD degrees and thereby permitting all candidates similarly placed as Petitioners, to take NEET-SS or DNB examination on that basis.

38. For the foregoing reasons, the present petitions are dismissed, along with other pending application(s).

SANJEEV NARULA, J

OCTOBER 11, 2022

as

