



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

Judgment reserved on: 25.07.2023

% **Judgment delivered on: 21.08.2023**

+ **W.P.(C) 2606/2022 & CM APPL. 7437/2022**

NISHKARSH SINGH PATEL

..... Petitioner

Through: Mr. Sandeep Bhalla, Advocate.

versus

NATIONAL MEDICAL COMMISSION & ORS Respondent

Through: Mr. Ripu Daman Bhardwaj, CGSC
for Respondent/ UOI.

Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Mr. Bhanu Gulati, Mr.
Tanishq Srivastava, Mr. Aabhas
Sukhramani, Ms. Anum Hussain &
Ms. Ramanpreet Kaur, Advocates for
Respondent No.1/ (NMC).

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner before this Court has filed this present Petition being aggrieved by a communication dated 07.02.2022 of the National Medical Commission (NMC) by which the Petitioner has been informed that he is not eligible for admission to MBBS Course keeping in view the Medical Council of India Regulations on Graduate Medical Education, 1997

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Signing Date: 21.08.2023
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(hereinafter to be referred as ‘Regulations, 1997’), as amended in 2017 namely Graduate Medical Regulation (amendment) 2017.

2. The facts of the case reveal that the Petitioner cleared 12th Standard examination from Central Board of Secondary Education (CBSE) with Physics, Chemistry and Mathematics as core subjects in May, 2010 and obtained a degree of Bachelors Engineering (Computer Science) in 2015.

3. He obtained Masters Degree in 2018 in Leadership and Management in Health and Social Care from Southampton, England, UK, and in 2021, he qualified Diploma in Pharmacy.

4. It is an undisputed fact that the Petitioner, thereafter, qualified in Biology from Board of High School and Intermediate Education (U.P. Board) in 2021, and he was declared successful by the U.P. Board in 2021 only in one isolated subject i.e. Biology.

5. The Petitioner in the year 2021 submitted an application for participating in the National Eligibility Cum Entrance Test, (Under Graduate), (NEET, UG) and the result for the same was declared on 01.11.2021.

6. The Petitioner’s contention is that on 02.02.2022, a provisional allotment letter was issued to him by the Medical Counseling Committee in the first round allotting a seat in Kasturba Medical College, Manipal University, Mangalore/Respondent No. 4 and as a result, he deposited a sum of Rs. 17,80,000/- towards fee with Respondent No. 4 on 03.02.2022.



7. Immediately thereafter, on 05.02.2022, the Petitioner was informed by the Manipal Academy of Higher Education that he has cleared only the subject of Biology in 2021, and he has passed 10+2 examination with Physics and Chemistry without Biology in 2010. Therefore, the Manipal University sought clarification whether the Petitioner, who has passed the mandatory subjects of Physics and Chemistry from CBSE and the third mandatory subject of Biology from UP Board can be considered for admission into the MBBS Programme. The E-mail received by the Petitioner is reproduced as under:

“To: Nishkarsh Singh Patel

Dear Sir/ Madam,

Greetings from Manipal Academy of Higher Education (MAHE), Manipal

Thank you for the email

While verifying the eligibility documents, it is observed that you have completed the 10+2 (Senior School Certificate Examination) from CBSE Board in 2010 with Physics and chemistry without Biology.

Then you have cleared Biology from the Board of High School and Intermediate Education U.P. in 2021.

We need the clarification on whether the mandatory subjects (Physics & chemistry) passed from CBSE Board and the third mandatory subject (Biology) passed from UP Board can be considered for admission into the MBBS program. Also, which board name needs to be entered in the official records as the Qualifying board.

Thanks and regards,



Director (Admissions),

*Manipal Academy of Higher Education (MAHE), Manipal
576104, Karnataka State, INDIA."*

8. The Petitioner immediately enquired with the NMC regarding the matter, and he was informed by the NMC vide E-mail dated 07.02.2022 that keeping in view the Graduate Medical Education Regulations (Amendment) 2017, he is not eligible for admission in MBBS Course. The decision of the NMC which is impugned in the present Petition is reproduced as under:

"To: Nishkarsh Singh Patel

Sir/ Madam,

Kindly refer your training mail.

The matter has been examined in the National Medical Commission in the light of facts and documents provided by you.

It has been observed that as per the following provision in Graduate Medical Education Regulations (Amendment) 2017, you are not eligible for admission in MBBS Course:

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

with regards,

Undergraduate Medical Education Board,

National Medical Commission"



9. The Petitioner in the aforesaid backdrop has prayed for the following reliefs:

“a. Quash the impugned communication at Annexure H including the rule quoted therein as ultravires, arbitrary, irrational and in contravention to the New Education Policy 2020.

b. direct the Respondents to give admission to the Petitioner to the Medical Education in terms of his rank awarded in NEET UG examination in the facts and circumstances of the present case in the interest of justice.”

10. Learned Counsel for the Petitioner has argued before this Court that the denial of admission by a medical college to the Petitioner is irrational, arbitrary, unlawful and violative of his rights under Article 21 of the Constitution of India i.e. the right to live with dignity by pursuing education to last possible ladder, right to livelihood etc. He has further argued that the denial of admission is in contravention to the National Education Policy, 2020 and principle of promissory estoppel. The Petitioner has challenged the constitutional validity of Regulations, 1997, on the ground that the regulations are arbitrary and *ultra vires* the policy of Government of India and therefore unenforceable.

11. A detailed and exhaustive counter-affidavit has been filed by the NMC (earlier known as Medical Council of India) wherein it has been stated that the Petitioner has admittedly passed 12th Standard Examination from CBSE on 21.05.2010 with the subjects of English Core, Mathematics, Physics, Chemistry and Physical Education. It has been further stated that the Petitioner did not study Biology along with other requisite subjects i.e. Physics, Chemistry and English with practicals either during Class 11th or



Class 12th, and he has passed the subject of Biology as an additional subject in the Intermediate Examination (Class 12th) conducted by the U.P. Board only on 31.07.2021 i.e. after almost 11 years of passing Class 12th on 21.05.2010.

12. The Respondents have further stated that the ground taken by the Petitioner that the statutory regulations framed by the NMC in respect of admission, selection, and counseling to MBBS Course in the country including the eligibility criteria are *ultra vires*, arbitrary and in contravention to the National Education Policy, 2020, is completely devoid of any factual and legal background. It has been further stated that as per Policy No. 18.3 of the National Education Policy, 2020 under the heading “18. Transforming the Regulatory System of Higher Education”, it has been clearly stated that the policy would exclude medical and legal education. Therefore, the ground raised by the Petitioner that the Medical Council of India Regulations on Graduate Medical Education, 1997 (Regulations, 1997) are violative of National Education Policy does not help the Petitioner in any manner.

13. The Respondents have further stated that as per the provisions of Regulations, 1997, a candidate is required to undergo regular, co-terminus/ simultaneous teaching and training in the subject of Physics, Chemistry and Biology in his/her Higher Secondary Education (10+2) and last 2 years of study (Class 11th & 12th) must comprise of the aforementioned subjects along with practicals. The Petitioner has not studied Biology with Physics and Chemistry in Class 11th and 12th and, therefore, the question of granting him admission does not arise.



14. The Respondents have further stated that the issue in the present case is no longer *res-integra* and is completely covered by the judgment dated 16.02.2021 passed by the Hon'ble Supreme Court in the case of ***Kaloji Narayana Rao University of Health Sciences Vs. Srikeerti Reddi Pingle & Ors.***, (2021) SCC OnLine 94.

15. The Respondents have further placed reliance upon a judgment dated 21.02.2022 delivered in by a Division Bench of the High Court of Madhya Pradesh (Indore Bench) in W.P.(C.) No. 3619/2022 titled ***Sohan Chauhan Vs. State of Madhya Pradesh & Ors.***, and common judgment dated 09.03.2022 delivered by a Division Bench of High Court of Madhya Pradesh at Jabalpur in W.P.(C.) No. 4244/2022 titled ***Ku. Aprna Patle Vs. State of Madhya Pradesh & Ors.***, and W.P.(C.) No. 3887/2022 titled ***Sachin Jatav Vs. Chief Secretary.***

16. Heard Learned Counsel for the Parties at length and perused the record. It is an undisputed fact that the Petitioner before this Court has cleared 12th Standard Examination from CBSE with Physics, Chemistry and Mathematics as core subjects in May 2010 and has thereafter, in the year 2021 qualified Biology from U. P. Board only in one isolated subject of Biology.

17. The Petitioner did participate in the NEET (UG), and his result was declared on 01.11.2021. He was allocated a seat in Kasturba Medical College, Manipal University, Mangalore on 02.02.2022 and, on 05.02.2022, he was informed by Manipal Academy of Higher Education that he has only cleared Biology as a separate subject in 2021 and he has passed Physics, Chemistry and Mathematics without Biology in 2010. Therefore, the Manipal University sought clarification whether the mandatory subjects of



Physics & Chemistry passed from CBSE Board and the third mandatory subject of Biology passed from UP Board make the Petitioner eligible for consideration for admission into the MBBS programme.

18. The Petitioner enquired about the matter with the NMC and he was informed by the NMC vide e-mail dated 07.02.2022 that he is not entitled for admission into the MBBS programme keeping in view the Regulations, 1997.

19. The erstwhile Medical Council of India in exercise of powers conferred upon it by Section 33 of the Indian Medical Council Act, 1956 had framed Regulations in respect of Graduate Medical Examination being Regulations, 1997. It is an undisputed fact that the Regulations have been held to be binding and mandatory by the Hon'ble Supreme Court and Regulation 4 of the Regulations, 1997, *inter alia*, provides the minimum eligibility criteria for admission to the First Bachelor of Medicine and Bachelor of Surgery (MBBS Course).

20. The Regulations, 1997 of the Medical Council of India, as already stated earlier, have been framed under Section 33 of the Act with the prior approval of Central Government and for achieving a higher standard of medical education which is also dependent on the selection of such eligible students as provided therein and is binding/ mandatory in respect of admission to be made to the MBBS Course.

21. Regulation 4 of the Regulations of 1997 provides for minimum eligibility criteria in respect of admission to MBBS Course and the said Regulations have been amended vide Notifications dated 22.01.2018, 04.02.2019 and 13.05.2019, which have also been published in the Official Gazette on 23.01.2018, 05.02.2019 and 14.05.2019 respectively.



22. Regulation 4(2)(a) of the amended Regulations, 1997 provides that the candidate should have undergone 10 + 2 examination i.e. 12 years of study where the last two years of study comprises of Physics, Chemistry, Biology / Biotechnology and Mathematics or any other elective subject with English. The relevant portion of the Regulations, 1997 is reproduced as under:-

“.....4. Admission to the Medical Course-Eligibility Criteria: No candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery course until he/she has qualified the National Eligibility Entrance Test, and he/she shall not be allowed to appear for the National Eligibility-Cum Entrance Test until:

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

(1A) He/She has obtained a minimum of marks in National Eligibility-Cum Entrance Test as prescribed in Clause 5 of Chapter II.

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

4(2) He/She has passed qualifying examination as under:-

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology/Biotechnology and Mathematics or any other elective subjects with English



at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education;

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges:

Or

(b) The intermediate examination in science of an Indian University/Board or other recognised examining body with Physics, Chemistry and Biology/Bio-technology which shall include a practical test in these subjects and also English as a compulsory subject; .

Or

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

Or

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

Or

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



examination with the following subjects - Physics, Chemistry, Biology and English.

Or

f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology/Biotechnology including practical test in each of these subjects and English.

Note: The pre-medical course may be conducted either at Medical College, or a science College.

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

23. Regulation 4(3) of the amended Regulations, 1997 provides that an aspiring candidate for admission to MBBS course is obliged to not only qualify his Senior Secondary Examination (10+2) with Physics, Chemistry, Biology / Biotechnology and English but should also obtain a minimum of 50% marks in Physics, Chemistry and Biology / Biotechnology subjects taken together and having passed English as one of the compulsory subjects. The relevant portion of the Regulations, 1997 is reproduced as under:-

“4(3) To be eligible for admission to MBBS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology (or Botany and /Zoology)/Biotechnology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology (or Botany and Zoology)/Biotechnology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list of “National Eligibility-cum-Entrance Test” for admission to MBBS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology (or Botany and Zoology)/Biotechnology taken together in qualifying examination shall be 40% instead of 50%. In respect of candidates with specified



disability under the Rights of Persons with Disabilities Act, 2016 the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 45% instead of 50%.

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

5% of the annual sanctioned intake capacity in Government or Government aided higher educational institutions shall be filled up by candidates with benchmark disabilities in accordance with the provisions of the Rights of Persons with Disabilities Act, 2016, based on the merit list of 'National Eligibility-cum-Entrance Test'. For this purpose the "Specified Disability" contained in the Schedule to the Rights of Persons with Disabilities Act, 2016 is annexed in Appendix 'G' and the eligibility of candidates to pursue a course in medicine with specified disability shall be in accordance with Appendix 'H'. If the seats reserved for the persons with disabilities in a particular category remain unfilled on account of unavailability of candidates, the seats shall be included in the annual sanctioned seats for the respective Category"

24. In light of the aforesaid Regulations governing the field, a candidate is compulsorily required to undergo regular, co-terminus/ simultaneous teaching and training in the subject of Physics, Chemistry and Biology in his/her Higher Secondary Education (10+2), and the last 2 years of Study (Class 11th and 12th) must comprise of the above mentioned subjects along with practicals.

25. The Regulations, 1997 also provide that the candidate aspiring to join MBBS Course is certainly required to pass Senior Secondary Examination



with Physics, Chemistry, Biology and English. It is also mandatory for a candidate to obtain 50% in the subjects of Physics, Chemistry and Biology and pass English as one of the compulsory subjects.

26. The Regulations, 1997 also provide that the candidate should have undergone regular teaching and training/ practical in the subjects of Physics, Chemistry and Biology through the period of 2 years i.e. Class 11th and 12th to be eligible to participate in the selection process for admission for MBBS Course.

27. In respect of similar controversy relating to eligibility for admission to MBBS Course, the Hon'ble Supreme Court in the case of ***Kaloji Narayana Rao University of Health Sciences*** (Supra) in Paragraphs 11, 12, 14, 15, 19, 20, 21, 22 & 23 has held as under:

“11. A plain reading of Regulation 4(2) shows that the MCI visualised five different situations, having regard to the nature and structure of high school education in India, and provided for equivalence in respect of other variants of similar examinations, possibly even overseas qualifications. In all, the MCI Regulations contemplate six qualifications for eligibility:

11.1. Higher secondary examinations conducted by one of the several boards (of secondary and senior secondary school examinations) or the Indian School Certificate Examination [Regulation 4(2)(a)].

11.2. The intermediate examination in science of an Indian University/Board or other recognised examining body [Regulation 4(2)(b)].

11.3. “Pre-professional/pre-medical examination” with Physics, Chemistry and Biology/Biotechnology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination, with further stipulation that the pre-professional examination



should have a practical test in Physics, Chemistry and Biology/Biotechnology [Regulation 4(2)(c)].

11.4. The first year examination of the three years degree course of a recognised university, with Physics, Chemistry and Biology/Biotechnology, with a further stipulation that the candidate should have passed the 10+2 examination with English at a level not less than the “core course” [Regulation 4(2)(d)].

11.5. The BSc examination of an Indian University, only if the candidate “has passed the BSc examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology)/Biotechnology and further that he/she has passed the earlier qualifying examination with the following subjects — Physics, Chemistry, Biology and English” [Regulation 4(2)(e)].

11.6. Any examination found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English [Regulation 4(2)(f)].

12. It is noticeable that each variant of what is acceptable, lays stress on certain common features:

(a) that the candidate should have passed the examination with Physics, Chemistry and Biology/Biotechnology;

(b) the candidate should have undergone practical tests in those science subjects;

(c) the candidate should have studied English and, lastly;

(d) that marks obtained in Mathematics would not be taken into consideration for deciding admission to the MBBS course.

x x x x x x x

14. A careful reading of the said provision discloses that the MCI emphasised that the candidate should have undergone



study at the 10+2 stage, (or in the intermediate course) in the specified subjects of Physics, Chemistry and Biology/Biotechnology. In this case, the certificate relied upon by the student [Issued by the West Hartford Science Department Supervisor.] merely clarifies that she undertook a course whilst in the 10th grade. That, by no means, is sufficient to fall within the description of “equivalent” qualification under Regulation 4(2)(f). Nor, in the opinion of this Court, can it be deemed adequate having regard to the letter of the Assistant Principal of Conrad High School [Dated 29-1-2021] that the AP course in Biological Sciences is of college standard.

15. In the opinion of this Court, there is a rationale and compelling logic on the part of the University to say that the candidate should have studied biology or biological sciences (apart from the other two science subjects, along with the further requirement of having studied English) in all the relevant years during the intermediate or at 10+2 level. Further, the reference to having studied in the first year in a degree course, at the college level with the said subject, carries with it, the implication that the student would have necessarily undergone academic study and training in the said three subjects at the 10+2 or intermediate level (without which, admission in a degree course is inconceivable in India). The further emphasis on having attended or undertaken practical lessons, (again at that level, in each of the years concerned) clearly signifies that a candidate should have undergone study in those subjects for the last two years at school or intermediate college level. The regulation is further clear that the examination score (marks) in Mathematics shall not be taken into consideration for the purpose of admission to a medical course, in reckoning merit or performance in the qualifying examination.

x x x x x x x

19. The High Court then cited and relied on Sharanya Balaji Nadar [Sharanya Balaji Nadar v. Dental Council of India, 2020 SCC OnLine Mad 8116] to hold that each sub-clause of Regulation 4(2) was independent, and that the qualification



held by the candidate, an NRI who had studied in the USA, was deemed to be equivalent to the prescribed eligibility conditions:

“13. It was categorically held by this Court that each clause is independent of the other and none of the sub-clauses can be read together.

If the candidate has fulfilled the requirements of any one of the clause, he or she will be entitled for admission to the medical course. The petitioners in the present case will fall within Regulation 4(f) and once the petitioners have produced the Equivalence Certificate issued by the 5th respondent, there is no more requirement to again subject the petitioners for one more scrutiny on their eligibility. It will be too farfetched to declare that a candidate who fulfils the requirements for NEET Examination, will not fulfil the qualification when it comes to joining the MBBS Course. Such an interpretation will lead to illogical consequences. The petitioners who were living in USA have come to this country to undergo the medical course and they were found to be eligible by the Equivalence Committee to write the NEET Examination.

After having been given an allotment in the 4th Respondent Institution, the 4th Respondent Institution cannot now undertake one more exercise and come to a completely different conclusion by reading Regulation 4(a) into Regulation 4(f) and thereby render the effect of Regulation 4(f) completely nugatory and redundant.”

20. It is apparent that the High Court followed its previous judgment, and did not closely scrutinise the equivalence certificate or the subject stipulations. It also appears to have been largely influenced by the fact that the candidate was in fact admitted by the University. In the opinion of this Court, the construction placed on Regulation 4(2) i.e. that each of the sub-clauses (a) to (f) prescribes independent qualifications which should be deemed essential, is rather simplistic. That interpretation ignores the fact that each of the sub-clauses insists that certain subjects should have been studied, and practical examinations attempted at the 10+2 or equivalent



level. Secondly, the college or intermediate examination [or equivalent qualifications under Regulation 4(2)(f)] cannot be read in isolation, having regard to the circumstances. The provision must be read in the context of the requirements for eligibility under Regulations 4(2)(a) to (e). The equivalence in qualification is not merely at the level of a 10+2 requirement i.e. that the candidate should have passed an examination equivalent to the intermediate science examination at an Indian University/Board. Additional to this requirement, Regulation 4(2)(f) requires equivalence in “standard and scope” in an examination where the candidate is tested in Physics, Chemistry and Biology including practical testing in these subjects, along with English. These subject-matter requirements are consistent across Regulations 4(2)(a) to (e) and (f).

21. The approach and construction placed by the High Court, in this Court's opinion, undermines the intent behind the MCI's insistence that a certain kind of education should be undergone, which is that each candidate for the MBBS course should have undergone study in Physics, Chemistry and Biology, in each of the levels (i.e. the two years of 10+2 board examination, or the intermediate examination concerned) with practical exams, in each of those years; that he or she should also have had English as a subject, and that the score in Mathematics would be ignored and not taken into consideration [The last negative stipulation, by a note, applicable to all the sub-clauses of Regulation 4(2).] . It would be, in this context, necessary to clarify that the equivalence relied on by the Telangana Intermediate Board in this case, merely alluded to the general equivalence in terms of education at the intermediate level, without stipulating whether the qualifications were equivalent in terms of the subjects in which she undertook courses for the relevant years.

22. The stipulation of equivalence in Regulation 4(2)(f) is not merely a formal one. The provision must be read in the context of the consistent conditions of eligibility prescribed in Regulations 4(2)(a) to (e), as noted above. This Court in R.M.D. Chamarbaugwalla v. Union of India [R.M.D.



Chamarbaugwalla v. Union of India, 1957 SCR 930 : AIR 1957 SC 628] interpreted the definition of a “prize competition” [Under Section 2(1)(d) of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948.] . A prize competition was defined as including crossword prize competitions, picture prize competitions, etc., and finally, any other prize competition, for which solution is or is not prepared beforehand by the promoters, or for which the solution is determined by lot or chance. This last qualification was appended only to the last sub-clause on “any other competition”. The Court held that the qualification should be equally applicable to the other sub-clauses too, and that there was no difficulty in reading the qualifying clause as lending colour to each of those items. In the present case, Regulation 4(2)(f) explicitly refers to the subject-matter requirement reiterated in all the eligibility conditions from (a) to (e); the substance of the eligibility requirement indeed, is that the candidate should have qualified an intermediate level examination or first year of a graduate course, and studied the subjects of Physics, Chemistry and Biology at this level, along with practical testing in these subject areas, and the English language. This subject-matter requirement is at the heart of eligibility to be admitted into the medical course.

23. *For these reasons, this Court is of the opinion that the interpretation placed upon the regulations in both the cited cases, by the Madras High Court, do not reflect the correct position. To be eligible, the candidate should produce clear and categorical material to show that she underwent the necessary years of study in all the stipulated subjects. This court is of the opinion that such stipulations are to be regarded as essential, given that the course in question, i.e., MBBS primarily if not predominantly, involves prior knowledge – both theoretical and practical, of senior secondary level in biology or biological sciences.”*

28. The Hon’ble Supreme Court in the aforesaid case has held that Regulation 4(2) of the Regulations, 1997 provides that a candidate should



have passed 10+2 levels with Physics, Chemistry, Biology/Bio-technology and the candidate should have gone through practical tests in the science subjects and the candidate should have studied English entitling him/her to be considered for admission in MBBS Course.

29. The Hon'ble Supreme Court has held that the statutory regulations provide for equivalence in standard and scope in an Examination where the candidate is tested in Physics, Chemistry and Biology/ Bio-technology including practicals in the subject along with English. Therefore, in light of the aforesaid judgment, as the Petitioner has not studied Physics, Chemistry, Biology and English together at 10+2 level, his candidature was rightly turned down by the NMC.

30. A Division Bench of High Court of Madhya Pradesh (Indore Bench) in the case of *Sohan Chauhan* (Supra) has taken a similar view relying upon the judgment delivered by the Apex Court in the case of *Kaloji Narayana Rao University of Health Sciences* (Supra). The High Court of Madhya Pradesh (Jabalpur Bench) in another case of *Ku. Aprna Patle* (Supra) has taken a similar view in the matter.

31. A Division Bench of this Court in Judgment dated 03.07.2023 passed in LPA 422/2023 titled *Aayushi Dineshbhai Prajapati Vs. Union of India*, (2023:DHC:4404-DB), while dealing with grant of eligibility certificate to a candidate to appear in the Foreign Medical Graduate Examination (FMGE), has dealt with a similar controversy. It is pertinent to note that in case a student obtains a MBBS degree from a foreign university, he is required to pass foreign medical graduate examination and for appearing in the FMGE, he/she has to obtain eligibility certificate from NMC. The grant of eligibility certificate is subject to fulfillment of requirements provided under the



Medical Council of India Regulations i.e. Graduate Medical Education Regulations, 1997 (Regulations, 1997) as amended from time to time and on account of Regulation 4(2), the Petitioner/Appellant before this Court in the aforesaid case was denied eligibility certificate by NMC .

32. It is in those circumstances that the Division Bench of this Court has held that it is mandatory for a student to pass Physics, Chemistry, Biology/ Bio-technology and should have undergone practicals in the Science subjects at 10+2 level. The Division Bench of this Court in Paragraph Nos. 14 to 20 has held as under:

“14. A perusal of the above shows that Appellant had enrolled herself in the NIOS in the month of April, 2014 and obtained her 12th Standard certificate in the month of November, 2014. It, therefore, cannot be said that the Appellant had Biology as a continuous subject along with the practical in the last two years of her education (Class 11th and 12th), which is an eligibility criteria for grant of an Eligibility Certificate to appear in Foreign Medical Graduates Examination (FMGE). She is, therefore, ineligible to take the Foreign Medical Graduates Examination (FMGE) even if she has obtained a MBBS course degree from Ukraine. The fact that the Appellant had received invitation to study in a college in Ukraine is irrelevant for the purpose of enabling her to take the Foreign Medical Graduates Examination (FMGE), since she does not satisfy the conditions which are necessary to take the Foreign Medical Graduates Examination (FMGE). 15. The learned Single Judge has examined the Judgment of Anshul Aggarwal (supra) and has distinguished Anshul Aggarwal (supra) with the facts of the present case by holding that the Judgment of Anshul Aggarwal (supra) does not dispense with the requirement of studying Biology for a period of two years. 16. Admittedly, the Appellant did not study Biology in her 11th and 12th standard class for the whole two years. The Judgment passed by the Division Bench of this Court in Anshul Aggarwal (supra) also categorically holds that a students who obtains 12th standard



certificate from NIOS must mandatorily study 11th and 12th class from NIOS with the requisite subjects and practical without which the candidate will not be eligible to obtain admission in a foreign university to pursue MBBS course. Paragraph No.43 of the Judgment Anshul Aggarwal (supra) reads as under

“43. The issue whether students, who clear class 12 from the recognized open school Boards were eligible and should be treated at par with candidates who have undergone regular schooling, it is apparent, had arisen earlier in 2012. MCI vide their letter dated 23rd February, 2012 to the NIOS had sought clarification on procedure adopted for conducting practical tests in Physics, Chemistry and Biology and whether NIOS students passing 10+2 had to undergo practical lessons and practical tests. NIOS had then responded vide communication dated 28th February, 2012 stating that the courses offered by them were undertaken through study centres, that were schools affiliated to a recognized National and State Board. Such schools had laboratories in the desired subjects like, Physics, Chemistry and Biology. It was mandatory for the students undertaking the said courses to perform practicals at the study centres. Attendance in these classes was compulsory for every learner. Practical exams were also conducted as held by any formal board. NIOS was following National Curriculum Framework, 2005 for evaluating the learners. NIOS had an et cetera curriculum, as their exams were conducted for both 11th and 12th class courses. In formal Boards, exams were conducted for class 12th course only. It may be relevant to state here that a student/candidate cannot appear in 10+2 examination unless he has been enrolled for two years with the NIOS/open Boards. These aspects were again clarified by NIOS to MCI vide their communication dated 30th July, 2012. This letter by NIOS had affirmed that large number of candidates of NIOS were appearing in various competitive examinations, including admission in



MBBS at national and State level and they were qualifying. Large number of such students were already studying in various medical colleges.” (emphasis supplied)

17. In view of the above, the contention of the learned Counsel appearing for Respondent No.2/NMC that the Judgment of Anshul Aggarwal (supra) is distinguishable from the facts of the present case is accepted.

18. Similarly, the decision relied upon by the learned Counsel appearing for the Appellant in the case of Tanishq Gangwar (supra) would not apply to the facts of the present case. The Judgment of Tanishq Gangwar (supra) does not state that even if a student has not studied Biology in 11th and 12th standard, will still be eligible to take admission in a foreign university for pursuing a MBBS course. The Judgment of Tanishq Gangwar (supra) only equates a student who has obtained 12th standard certificate from NIOS to a student who has obtained 12th standard certificate from a State Board or CBSE Board. The Judgment of Tanishq Gangwar (supra) also dealt with a case where the Petitioner therein had taken Biology as an additional subject which is not the case in the present matter. In the present case, the Appellant had not taken Biology in her 11th and 12th standard. She only studied Biology for only 7 months which cannot equate her to a candidate who has studied Biology for the whole two years in NIOS and then passed the 12th standard examination conducted by NIOS.

19. In view of the above, this Court does not find any reason to interfere with the Judgment passed by the learned Single Judge.

20. Resultantly, the LPA is dismissed, along with pending application(s), if any. ”

33. In the considered opinion of this Court, in light of the aforesaid judgments as the Petitioner has not passed the subject in Biology in Class 11th and 12th Examinations as regular/ continuous/ co-terminus/ simultaneously with other prescribed subject i.e. Physics, Chemistry and



English, he does not fulfill the conditions as required for admission to MBBS Course under the Regulations, 1997.

34. The Petitioner before this Court except for stating that the aforesaid regulations are in violation of Article 21 of the Constitution of India has not raised any other ground enabling this Court to declare the Regulations, 1997 as *ultra vires* as prayed for.

35. The Petitioner except for making a bald statement that the Regulations, 1997 are in contravention of new Education Policy, 2020 has not been able to demonstrate before this Court as to how the Regulations, 1997 are violative of the New Education Policy, on the contrary new Education Policy, 2020 at Clause No. 18.3 categorically provides that the Policy would exclude medical and legal education. Therefore, the ground raised by the Petitioner that the Regulations, 1997 are violative of the new Education Policy, 2020 also does not help the Petitioner in any manner.

36. Accordingly, in the considered opinion of this Court, the Petitioner has not been able to raise any ground for declaring the Regulations, 1997 as *ultra vires*. Hence the question of interference by this Court in the facts and circumstances of the case does not arise.

37. With the aforesaid observations, the present Writ Petition stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SAURABH BANERJEE)
JUDGE

AUGUST 21, 2023/aks

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