



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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

+ **LPA 422/2023**

AAYUSHI DINESHBHAI PRAJAPATI Appellant

Through: Ms. Archana Pathak Dave with Mr. Kumar Prashant and Mr. Avnish Dave, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Bhanu Gulati, Mr. Anum Hussain, Mr. Aabhas Sukhramani, Mr. Tanishq Srivastava and Ms. Ramanpreet Kaur, Advocates for R-2/NMC.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

CM APPLs. 24012-13/2023 (Exemption)

Allowed, subject to all just exceptions.

LPA 422/2023 & CM APPLs. 24010-11/2023

1. Aggrieved by the Judgment dated 02.02.2023 passed by the learned Single Judge in W.P.(C) 13982/2022 dismissing the writ petition, the Appellant has filed the instant LPA.
2. Shorn of unnecessary details, facts leading to the filing of the instant LPA reads as under:

- a) The Appellant took the Higher Secondary Certificate Examination (12th Examination) from the Gujarat Secondary & High Secondary Examination Board, Gandhinagar with Physics, Chemistry and



Mathematics as her primary subjects and cleared the same with 54.44% marks in March, 2013.

- b) After about an year i.e., in April 2014, the Appellant enrolled herself in the National Institute of Open Schooling (*hereinafter referred to as 'NIOS'*) with Physics, Chemistry and Biology as her subjects and cleared her 12th standard examination. Though, the Appellant enrolled in NIOS in the month of April, 2014, she obtained passing certificate in the month of November, 2014 i.e., after a period of 7 months.
- c) In the year 2015, the Appellant applied for studying MBBS/MD physician course in Ukraine for the session 2015-16. The Appellant completed her MBBS course in the year 2021.
- d) In order to practise in India, the Appellant was required to appear in a Foreign Medical Graduates Examination (FMGE) in the year 2021 and for which purpose, the Appellant had to obtain an Eligibility Certificate from Medical Council of India (MCI) as per the Eligibility Certificate Regulations, 2002. The Appellant started corresponding with the Ministry of Health and Family Welfare for getting the eligibility certificate.
- e) The Ministry rejected the request of the Appellant for issuance of eligibility certificate *vide* letter dated 29.08.2022. Even though, the said letter dated 29.08.2022 has been quoted by the learned Single Judge in the Impugned Judgment, the same is reproduced herein below for reference:

“I am directed to refer to your letter dated 28.07.2022 seeking help in getting Eligibility Certificate issues and to inform you that the matter has been examined in the Ministry and it has been observed as under:



(a) A candidate should have taken Eligibility Certificate from Erstwhile MCI.

(b) At the time when you took admission, candidates passing from Open school were not eligible for getting admission in MBBS.

(c) Hon'ble High courts in judgment dated 11.05.2018 declared passing 12th class from NIOS at par with 12th Class (regular), However, it is still for consideration whether the judgment can be considered in retrospective effect.

(d) Finally, as per eligibility, a candidate has secure 50% marks which is pre requisite for pursuing MBBS courses by General Candidate & you have not presented OBC category or any other reserved category certificate.

*Yours faithfully
(Sunil Kumar Gupta)
Under Secretary to Government of India”*

- f) The Appellant, thereafter, approached this Court by filing a writ petition bearing W.P.(C) 13982/2022 praying for quashing of the communication dated 29.08.2022 issued by the Ministry/Respondent No.1 therein and also prayed for a direction to be issued to the Respondents for issuance of Eligibility Certificate to enable her to take the Foreign Medical Graduates Examination (FMGE).
- g) The learned Single Judge by the Impugned Judgment herein rejected the writ petition preferred by the Appellant herein holding that the regulations have been framed by MCI/NMC with regard to grant of Eligibility Certificate, which is an Expert Body and as per the regulations, the Appellant herein does not fulfil the criteria to obtain the Eligibility Certificate. The learned Single Judge held that the



Expert Body has laid down the criteria to decide as to which of the students would be eligible to take the examination and the Courts should not sit over the decision taken by an Expert Body.

h) The Appellant, thereafter, approached this Court by filing the instant LPA challenging the impugned Judgment passed by the learned Single Judge.

3. Ms. Archana Pathak Dave, learned Counsel appearing for the Appellant, places reliance upon a Judgment passed by this Court in Tanishq Gangwar & Ors. v. Union of India & Ors in **W.P.(C) 6773/2018** to contend that the case of the Appellant herein is identical to the said case. She submits that in the said case, the Division Bench of this Court held that a candidate who has passed 12th standard examination with Biology as an additional subject at 10+2 level either at one go or after a year should be treated at par with a student of regular course of study prescribed and the Appellant cannot be denied Eligibility Certificate primarily on the ground that the Appellant has obtained her 12th standard certificate from NIOS with Biology.

4. Ms. Dave further relies upon a Judgement passed by Division Bench of this Court in Anshul Aggarwal vs Union Of India & Ors., **W.P.(C) 1813/2018** dated 11.05.2018 wherein this Court has held as under:

“61. Clause 4(2)(a) requires that the student/candidate should have studied in the last two years subjects of Physics, Chemistry, Biology and Mathematics with English at a level not less than a core course prescribed by National Counsel for Educational Research and Training as per educational structure recommended by the National Committee on education. We are not diluting, interfering or amending the said requirement and eligibility condition. Indeed, MCI itself in their letter dated 14th September, 2012 accepts that students from NIOS



Board could meet the said minimum requirement and condition, if the student had studied the relevant subjects for two years at 10+2 level. It is the proviso now incorporated vide Notification dated 22nd January, 2018 which disqualifies and declares such candidates as ineligible and disqualified. Emphasis on regular and continuous study for two years, we would hold, does not exclude study by methods and manner recognized by law as appropriate and proper method of imparting education. Pertinently, sub-clause (f) to clause 4(2) of the Regulations states that any other examination which in scope and standard is found to be equivalent to intermediate science examination of an Indian university/Board with Physics, Chemistry and Biology including practical test in each and English are to be considered as eligible.

75. In view of the aforesaid discussion, our findings and conclusions are as under:-

(a) Proviso to clause 4(2)(a) of the Regulations disqualifying recognized open school Board candidates is struck down and declared unconstitutional. Students/candidates, who have done class 12 from NIOS or recognized open school State Boards, would not be treated as per se disqualified for selection and appearance in NEET examination. Their NEET results, when otherwise eligible, would be declared with other candidates.

(b) Proviso to clause 4 prescribing upper age limit of 25 years in case of general category candidates and 30 years in case of reserved category candidates is legal and valid. To this extent, the writ petitions challenging vires of proviso to clause 4 of the Regulations are dismissed.

(c) In respect of private students, MCI has already issued clarification, which appears to have satisfied grievance of the private candidates. In the light of the said clarification, no arguments have been addressed



before us and, therefore, we have not decided or adjudicated on the said issue/aspect.

(d)Writ Petition (C) No. 1982/2018, Jasna Shayla K versus Union of India and Ors. and Writ Petition (C) No.1972/2018, Jalaludheen T. & Anr. versus Medical Council of India and Ors. are dismissed in view of the judgment of the Supreme Court in Dinesh Singh Chauhan (supra). ”

5. Ms. Dave further submits that the fact that the Appellant has cleared her 12th standard examination from the regular board without having biology as a subject is immaterial because in any event, the Appellant has enrolled herself in the National Institute of Open Schooling (NIOS) with Physics, Chemistry and Biology as her subjects and thereafter cleared her 12th standard examination and obtained a certificate from NIOS.

6. Ms. Dave further draws attention of this Court towards a letter dated 14.09.2012 written by Medical Council of India to NIOS stating that students who have cleared their 12th standard examination conducted by the NIOS should also be considered as eligible for admission in MBBS course.

7. Ms. Dave contends that the Impugned Judgment passed by the learned Single Judge is contrary to the Judgment passed by this Court in Tanishq Gangwar (Supra) and Anshul Aggarwal (supra).

8. *Per contra*, Mr. T. Singhdev, learned Counsel appearing for Respondent No.2/NMC, submits that the learned Single Judge has dismissed the writ petition on the ground that the Appellant does not have basic qualification, i.e. Higher Secondary Certificate (12th Examination) with Biology. He submits that the Appellant has pursued her 11th and 12th class education with the subjects Physics, Chemistry and Mathematics. He states that in order to become eligible to get admission in MBBS course, the Appellant must have pursued her 11th and 12th with the subjects Physics,



Chemistry, Biology and English. He submits that pursuing a 7 months course i.e., from April, 2014 to November, 2014 and, thereafter, obtaining 12th examination certificate from NIOS does not satisfy the conditions laid down in the Regulations. He submits that the eligibility requirement for taking admission in an undergraduate medical course in a Foreign University is governed by Foreign Medical Institution Regulations, 2002, which prescribes the minimum eligibility criteria, and the same has not been fulfilled by the Appellant.

9. Mr. Singhdev submits that the Judgments passed by this Court in cases of Tanishq Gangwar (supra) is distinguishable. He states that the judgment of the Apex Court in the case of Kaloji Narayana Rao University of Health Sciences v. Srikeerti Reddi Pingle, (2021) 14 SCC 134, has also been followed by a Division Bench of High Court of Madhya Pradesh at Indore in the case of Sohan Chouhan vs. The State Of Madhya Pradesh in W.P. (C) 3619/2022 dated 21.02.2022.

10. The contention of the learned Counsel appearing for the Respondent No.2/NMC is that a 12th standard certificate of NIOS can be considered only if a student has studied for two years in the open school with Biology as a subject and has cleared the 12th standard examination. He submits that the Appellant enrolled herself in NIOS in the month of April, 2014 and obtained 12th standard certificate in the month of November, 2014 i.e., after a period of 7 months which, therefore, cannot make her eligible to get requisite eligibility certificate for taking FMGE examination.

11. Heard learned Counsel appearing for the Parties and perused the material on record.



12. Regulation 4(2) of the Medical Council of India Regulations on Graduate Medical Education, 1997 as amended from time to time reads as under:

“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 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.

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 recognized examining body with Physics, Chemistry and Biology 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, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/premedical examination shall include a practical test in Physics, Chemistry & Biology 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 including a practical test in these 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) 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 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.

Marks obtained in mathematics are not to be considered for admission to MBBS course.

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

(emphasis supplied)

13. The Apex Court in Kaloji Narayana Rao (supra) has examined the aforementioned Regulation 4(2) of Medical Council of India Regulations on Graduate Medical Education, 1997 and the same reads 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.

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.

xxx

*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.”
(emphasis supplied)

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.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 03, 2023

S. Zakir