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

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

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W.P.(C) 13982/2022 & CM APPL 42767/2022

Between:-

AAYUSHI DINESHBHAI PRAJAPATI
D/O DINESHBHAI ISHWARLAL PRAJAPATI
R/O B-20, PUSHPADHAN BUNGLOWS,
LINK ROAD, BHARUCH,
GUJARAT-392001PETITIONER

*(Through: Ms. Archana Pathak Dave, Mr. Kumar Prashant,
Mr. Pramod Kumar Vishnoi & Mr. Avnish Dave, Advocates.)*

AND

UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
THROUGH ITS SECRETARY/AUTHORISED
REPRESENTATIVES
'A' WING, NIRMAN BHAVAN,
NEW DELHI-110011RESPONDENT NO. 1

NATIONAL MEDICAL COMMISSION
THROUGH ITS CHAIRMAN/AUTHORISED
REPRESENTATIVE
POCKET- 14 , SECTOR-8, DWARKA PHASE -1,
NEW DELHI – 110077RESPONDENT NO. 2

NATIONAL BOARD OF EXAMINATION IN MEDICAL
SCIENCES
THROUGH ITS PRESIDENT/AUTHORISED
REPRESENTATIVES
MEDICAL ENCLAVE, M.G. MARG,
ANSARI NAGAR RING ROAD,
NEW DELHI-110029RESPONDENT NO. 3

(Through: Mr. Shrey Sharawat, Special Panel Counsel for

*R-1/UOI with Mr. Prajesh Vikram Srivastava, GP.
Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Michelle B. Das,
Ms. Bhanu Gulati, Ms. Ramanpreet Kaur & Mr. Aabhaas
Sukhramani, Advocates for R-2.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Ms. Kunjla
Bhardwaj, Mr. Madhav Bajaj & Mr. Durgesh Nandini,
Advocates for NBE/R-3.*

% Pronounced on : 02.02.2023

J U D G M E N T

1. This petition under Article 226 of the Constitution of India seeks to challenge the communication dated 29.08.2022 (*Annexure P-1*) issued by Union of India through the Ministry of Health and Family Welfare, Department of Health and Family Welfare, New Delhi, whereby, in response to the letter dated 28.07.2022, for issuance of an eligibility certificate in favour of the petitioner, the concerned Ministry has responded negatively.
2. The facts of the case are as under:-
 - (i) In March, 2013, the petitioner cleared Higher Secondary Certificate Examination (12th Examination) from the Gujarat Secondary & Higher Secondary Examination Board, Gandhinagar with Physics, Chemistry, and Mathematics as her primary subjects with an aggregate of 54.44% marks.
 - (ii) In April, 2014, the petitioner took admission in National Institute of Open Schooling (hereinafter referred as 'NIOS') to obtain the same qualification with the combination of Biology being one of the subjects along with Physics and Chemistry.
 - (iii) On 14.11.2014, the petitioner obtained the certificate of clearing Senior Secondary School Examination through NIOS.

- (iv) In pursuance to the request of the petitioner, the Ministry of Public Health Bukovinian State Medical University, Ukraine, in terms of the communication dated 15.06.2015 (*Annexure P-6*) allowed the petitioner to undergo MBBS/MD Physician course in Ukraine for Session 2015-2016.
- (v) In the year 2021, the petitioner completed the full course in the said University and a certificate in that respect was issued by the concerned University on 03.09.2021 (*Annexure P-7*).
- (vi) In order to appear in the screening test, the petitioner applied for the eligibility certificate by a request letter dated 13.10.2021. There were various correspondence between the petitioner and the concerned authority. However, despite all clarifications, the eligibility certificate was not issued in favour of the petitioner. The respondent No. 1 issued the impugned communication dated 29.08.2022, informing the petitioner that for the reasons mentioned therein the eligibility certificate cannot be issued. The impugned communication dated 29.08.2022 reads as under:-

“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”

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner, in order to practice Medicine in India, is required to pass the Foreign Medical Graduate Examination (FMGE) and the only reason for the denial of the certificate is that she has not studied Physics, Chemistry and Biology at the 12th level which is factually incorrect. According to her, the Screening Test for granting approval to the medical graduates from foreign countries is governed by **Screening Test Regulation, 2002** (in short STR, 2002). To enable the candidates to appear in Screening Test, an eligibility certificate is required from the Medical Council of India (now National Medical Commission, hereinafter referred as MCI/NMC). The eligibility certificate is granted in terms of the applicable Regulations, it being **Eligibility Requirement for Obtaining Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002** (hereinafter referred as Eligibility Regulation, 2002). She, therefore, submitted that in accordance with the applicable Regulations, the petitioner is entitled for issuance of the eligibility certificate. She has referred to the communication dated 26.04.2022 issued by NIOS, which clarifies that the courses conducted by NIOS are being accepted by the MCI/NMC *vide* letter dated 14.09.2012. She has also referred to the clarification regarding equivalence of NIOS certificate dated 14.09.2012 to indicate that if the requirement of graduate medical education Regulations regarding

eligibility criteria for admission to MBBS courses are fulfilled by the students appearing in 12th examination conducted by the NIOS, they may be considered eligible for admission to MBBS courses.

4. Learned counsel appearing on behalf of the petitioner has also placed reliance on various eligibility certificates issued by MCI/NMC. Even in cases where before joining a foreign University, the concerned candidate did not obtain prior permission from the MCI/NMC, the eligibility certificates have been issued. The specific reliance is placed on *Annexure P-14 (colly)*. She further submitted that the eligibility certificate has been granted even to a candidate who obtained the medical qualification from the same University of Ukraine from which the petitioner did her medical graduation. According to her, if the petitioner has obtained 12th certificate as an additional qualification with Biology from NIOS, the same would not preclude her to obtain eligibility certificate. She submits that this issue has been conclusively decided by this court in the case of *Anshul Aggarwal v. Union of India & Ors.*¹ and *Tanishq Gangwar & Ors. v. Union of India & Ors.*² She further submitted that the application of the petitioner has also been rejected by MCI/NMC in terms of the e-mail communication dated 08.09.2022 (*Annexure R-2/28*) on erroneous understanding of the facts.

5. Learned counsel appearing on behalf of respondent Nos.2 and 3 opposed the prayer and they submitted that the instant petition is bereft of merit and the same deserves to be dismissed outrightly. Learned counsel appearing on behalf of respondent No. 2 specifically urged that in the absence of a challenge to communication dated 08.09.2022, whereby, the application of the petitioner seeking

¹ W.P.(C) 1813/2018

² W.P.(C) 6773/2018

eligibility certificate has been rejected by MCI/NMC, no substantive relief can be granted to the petitioner. It is the specific case of respondent No. 2 that the petitioner in her 12th examination from Gujarat Secondary and Higher Secondary Examination Board in the year 2013 did not study Biology as one of the subjects. The petitioner only studied for a period of six months in NIOS and has been granted the certificate by NIOS with respect to Higher Secondary Examination. According to MCI/NMC, a candidate desirous of joining any undergraduate medical course in a Foreign Medical Institution on or after 15.03.2002 had to approach the MCI/NMC for issuance of an eligibility certificate so as to proceed to a Foreign Medical Institute. According to him, the Indian Medical Council Amendment Act was passed by the legislature on 03.09.2001 incorporating certain provisions in the **Indian Medical Council Act, 1956** (IMC Act, 1956). Sections 13(4A) and 13(4B) have been inserted providing for the issuance of eligibility certificate before admission and the qualifying of screening test after obtaining the medical qualification by the candidates coming back with medical qualification from abroad. It is, thus, submitted that after the cut-off date i.e., 15.03.2002, any candidate prior to taking admission in any Foreign Medical Institution has to approach the MCI/NMC for the purpose of procuring an eligibility certificate and upon returning, after completing the said foreign medical course, had to qualify the screening test. The eligibility requirement for taking admission is stipulated in Eligibility Regulation, 2002 and the screening test is contemplated in STR, 2002. He, therefore, submitted that firstly, the petitioner did not obtain any eligibility certificate before taking admission in foreign country and secondly, the qualification obtained by the petitioner from NIOS does not fulfil the requirement of the

applicable Regulation to be eligible to take admission in India in an MBBS Course. The qualification has not been obtained after undergoing a two-year course with practical and English being one of the subjects besides Physics, Chemistry and Biology.

6. He states that the decision relied by learned counsel for the petitioner in the cases of *Anshul Aggarwal (supra)* and *Tanishq Gangwar (supra)* is distinguishable. It is submitted that the issue whether any mode of passing Class 11th and Class 12th without undergoing the last two year of education with the subjects of Physics, Chemistry, Biology and English for admission in MBBS course is permissible or not stands conclusively adjudicated by the Hon'ble Supreme Court in the case of *Kaloji Narayana Rao University of Health Sciences Vs. Srikeerti Reddi Pingle & Ors*³. Reliance is also placed in the cases of *Medical Council of India v. Indian Doctors from Russia Welfare associations and others*⁴, *Yash Ahuja and Others v. Medical Council of India & Ors.*⁵, *Ishan Kaul & Ors. v. Medical Council of India & Anr.*⁶, *Rohinish Pathak v. Medical Council of India & Anr. W.P.(C) 5905/2017*, *Rohinish Pathak v. Medical Council of India & Ors. SLP(C) No. 18168/2019*.

7. It is further submitted that the candidates who studied Biology after passing Class 12th examination cannot be permitted to take admission in MBBS Course and the study of the subjects of Physics, Chemistry and Biology with English is necessary with practical in Class 11th & Class 12th. Reliance is further placed on various decisions including the cases of *Raghukul Tilak v. Union of India & Anr.*⁷,

³ 2021 SCC OnLine SC 94

⁴ (2002) 3 SCC 696

⁵ (2009) 10 SCC 313

⁶ AIR 2010 Del 112

⁷ 2006 SCC OnLine Del 1142

*Raghukul Tilak v. Union of India & Anr*⁸, *Raghukul Tilak v. Union of India & Ors*⁹, *Rubab v. Medical Council of India*¹⁰, *Mohammad Parvez Akhtar v. Union of India & Ors*¹¹, *Mohammad Parvez Akhtar v. Union of India & Ors*¹², *Mohammad Parvez Akhtar v. Union of India & Ors*¹³, *Ms. Sneha Manimurugan v. MCI & Ors*¹⁴, *Medical Council of India & Ors v. Aiman Kamal & Ors*¹⁵, *Mrs. Owshitha Surendran Vs. NMC & Ors*¹⁶, *Sohan Chauhan v. State of Madhya Pradesh & Ors*¹⁷ and *Ku. Aprna Patle v. State of Madhya Pradesh & Ors*¹⁸

8. It is thus submitted that since the petitioner has not undergone regular, continuous and co-terminus/simultaneous teaching and training alongwith practical in the subject of Biology alongwith other requisites subjects in the last two years of education (Class 11th & Class 12th), the petitioner is ineligible for the grant of eligibility certificate to appear in the screening test.

9. The respondent No. 3 while filing a separate counter affidavit has also opposed the prayer made by the petitioner and has submitted that unless the petitioner submits eligibility certificate in terms of Regulation 4(2) of the STR, 2002, the said respondent cannot allow the petitioner to appear in FMGE screening test examination. It is the specific case of respondent No. 3 that in the absence of any certificate, no direction can be given to the said respondent to disobey applicable Regulations.

⁸ 2007 SCC Online Del 871

⁹ SLP(C) No.3571/2007

¹⁰ W.P.(C) No. 2985/2008

¹¹ W.P.(C) 10133/2009

¹² LPA 471/2009

¹³ SLP (C) No. 32833/2009

¹⁴ 2016 SCC Online Mad 17468

¹⁵ SLP (C) No. 35683/2016

¹⁶ W.P. No. 12782/2021

¹⁷ W.P. No. 3619/2022

¹⁸ W.P. No. 4244/2022

10. The learned counsel in rejoinder submission has tried to distinguish the judgments relied upon by respondent No.2 and it has been submitted that there is no denial to the fact that various candidates were issued eligibility certificate even after they completed the course from Foreign Institutions without the prior obtaining of eligibility certificate. It is also submitted that the petitioner is not requesting for outright issuance of permission to practice in India but the petitioner is ready to undergo the screening test so that her merit can be examined.

11. I have heard Ms. Archana Pathak Dave assisted by Mr. Kumar Prashant, learned counsel appearing on behalf of the petitioner, Mr. Shrey Sharawat, Special Panel Counsel assisted by Mr. Prajesh Vikram Srivastava, GP, on behalf of respondent No.1; Mr. T. Singhdev assisted by Mr. Abhijit Chakravarty, learned counsel for respondent No. 2 and Mr. Kirtiman Singh, learned CGSC assisted by Mr. Waize Ali Noor, learned counsel for respondent No.3 and perused the record.

12. It is seen that on 03.09.2001, the Indian Medical Council Amendment Act, was passed by the legislature incorporating certain provisions in the IMC Act, 1956 including Section 13(4A) and 13(4B) providing for issuance of eligibility certificate before admission and qualifying screening test after obtaining the medical qualification by the candidate coming back with medical qualification from abroad. The case of the petitioner would fall within the scope of sub-Section 4(B) of Section 13 of the IMC Act, 1956, which is being reproduced as under:-

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

1.....
2.....
3.....
4.....
(4A).....

(4B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before' the commencement of the Indian Medical Council (Amendment) Act. 2001 shall not be required to obtain eligibility certificate under this sub section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register."

13. Before the STR 2002 or Eligibility Regulations, 2002 were to be made applicable; the same were placed before the Hon'ble Supreme Court in the case of ***Indian Doctors from Russia Welfare Associations and Others (supra)***. Paragraph No.6(B) and 7 of the decision in ***Medical Council of India v. Indian Doctors from Russia Welfare associations and others (supra)*** are reproduced as under:-

"6. In order to regulate the grant of registration to such persons who have

(A)....

(B) All students who have taken admission abroad prior to 15-3-2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the screening test even if they also come in the categories of circumstances contained in (A)(i) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements

for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15-3-2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15-3-2002. From 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.

7. In the special features and circumstances arising in these cases, it is unnecessary to consider the various contentions urged on behalf of the parties but we propose to dispose of these matters by approving the guidelines set forth above in exercise of powers under Article 142 of the Constitution and these guidelines will be applicable to all such persons who are similarly situate, whether they are parties before this Court or not. In respect of those who have already applied for registration to MCI, the same shall be granted or refused within a period of 15 days from today in terms of this order. On grant of such registration, the students shall undergo the internship or the housemanship, if needed. It is made clear that these guidelines approved by us are by way of a one-time measure. Future cases will be governed by the revised Regulations framed by MCI as approved by the Government”.

14. The cut-off date and the power of the MCI has further been assented to by the Hon’ble Supreme Court in the matters of **Sanjeev Gupta & Ors. v. Union of India & Anr.**¹⁹ and **Yash Ahuja and Others (supra)**. Paragraph No.62 of the decision of **Yash Ahuja and Others (supra)** is reproduced as under:-

“62. Sub-section (4-B) mentions that a person, who is citizen of India, shall not, after the date to be specified by the Central Government, be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country unless he obtains an eligibility certificate to be issued by the Council. It further provides that in case such person obtains such qualification without obtaining such eligibility certificate, he will not be eligible to appear in the screening test referred to in sub-section (4-A)”.

15. The Regulation 2(f) of Eligibility Regulations, 2002 defines ‘qualifying examination’, which would mean the examination to be qualified to become eligible for admission to MBBS Course in India

as prescribed in the **Graduate Medical Education Regulations, 1997** (in short ‘GME Regulations’, 1997). Regulation 3 prescribes the cut-off date as 15.03.2002. As per the Regulation 8, MCI/NMC is required to consider the application for eligibility certificate and to verify various aspects as mentioned therein. Regulation 2(f), 3, 8, 9 & 10 of the Eligibility Regulation, 2002 are being reproduced as under:-

“2 Definitions- In these regulations, unless the context otherwise requires-

(a) to (e).....

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

3. An Indian citizen, who has passed the qualifying examination either from India or an equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution on or after 15th March, 2002 shall approach the Council for issue of an Eligibility Certificate for that purpose.

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

(i) Whether the candidate fulfills the age criterion prescribed by the Council?

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

(iii) If the candidate belongs to SC/ST/OBC, whether he /she has produced a caste certificate from a Competent Authority?

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



provisional/permanent registration by the Medical Council of India or the State Medical Councils.

10. In case the candidate does not fulfill any of qualifying criteria the Council may reject his application for issue of Eligibility Certificate giving the reasons therefore”.

16. It is thus seen that it is only after verification, the MCI shall issue an eligibility certificate in the prescribed format to the candidate certifying that he/she is eligible to join a medical institution outside India to obtain a primary medical qualification. Regulation 8(ii) specifically stipulates that one of the conditions to be fulfilled by the candidate is to be eligible for admission to MBBS Course in India as prescribed in GME Regulations, 1997, which stipulates the minimum qualifying marks criteria in Physics, Chemistry, Biology and English including relaxed criteria in case the candidate belongs to a reserved category.

17. Clause 4(2) substituted in terms of notification published on 03.11.2010 in the Gazette of India of Graduate Medical Education Regulations, 1997, which is reproduced 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 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;”

18. It is thus seen that the candidate must have passed qualifying examination of Higher Secondary or the Indian School Certificate Examination which is equivalent to 10+2 (Higher Secondary Examination) after a period of 12 years of study. The last two years of study must comprise of Physics, Chemistry, Biology/Bio-technology and Mathematics or any other elective subject with English at a level not less than core course 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.

19. In the instant case, the certificate relied upon by the petitioner to prove her eligibility clearly lacks the basic requirement of completing 12 years of study with the last two years comprising of Physics, Chemistry, Biology/Bio-technology and Mathematics. The petitioner first obtained Higher Secondary qualification with the combination of Physics, Chemistry and Mathematics and realizing that the same qualification may not qualify her to undergo medical education, she appears to have undergone a 6-7 months course from NIOS. The same apparently does not qualify her to be admitted in medical course even in India.

20. A mark sheet issued by NIOS, which is the basis of the petitioner's eligibility, is reproduced as under:-

Form No. D 83932
AT. NO. 9302

राष्ट्रीय मुक्त विद्यालयी शिक्षा संस्थान
National Institute of Open Schooling
पूर्वतः राष्ट्रीय मुक्त विद्यालय (N.M.V.)
Formerly National Open School (N.O.S.)
संघ: सरकार (Govt. of India)

अंक विवरणिका / MARKS STATEMENT

उच्चतर माध्यमिक विद्यालय परीक्षा
SENIOR SECONDARY SCHOOL EXAMINATION

APRIL-2014 SESSION

परीक्षार्थ नाम: PRADIPATI AAYUSHI
परीक्षार्थ नाम (Mother's Name): VARSHADEVI
पिता / अभिभावक का नाम: DINESHCHAUHAN
रोल नं.: 930213300114

बीई CODE	विषय SUBJECT	अंक: MARKS OBTAINED			कुल अंक (माउट नं.) Total in words	ग्रेड	अंक में Pass in this
		वैकल्पिक: प्रयोगिक Theory	प्रयोगिक Practical	कुल Total			
312	PHYSICS	28	17	45 P	FORTY FIVE	P	
313	CHEMISTRY	26	18	44 P	FORTY FOUR	P	
314	BIOLOGY	26	11	37 P	THIRTY SEVEN	P	
TOTAL		= 127			One Hundred Twenty Seven		

ENROLLED FROM: PONE

NOIDA (NCR)

दिनांक: 14/11/2014

XXXX

Signature (Signature)
Director (Director)

21. A perusal of the Score Card of the petitioner (*Annexure P-4*) would clearly reveal that the same is the certificate of passing Senior Secondary School Examination. The admission appears to have been taken in April, 2014 and certificate appears to have been given on 14.11.2014. The requirement under GME Regulations 1997 is that out of the 12-years of study, last two years, means Class 11th & 12th, must comprise of Biology and these two years, have to be two Academic Sessions and cannot be clubbed in one year of study. The petitioner's Score Card only indicates that she appeared in Physics, Chemistry and Biology and has passed the said examination without any further details to appreciate whether the same comprised of two years of study with required subjects.

22. So far as the decision relied upon by learned counsel for the petitioner in the case of *Anshul Aggarwal (supra)* is concerned, the same would not be applicable in the instant case. Firstly, the issue in the case of *Anshul Aggarwal (supra)* was with respect to challenge to the notification dated 22.01.2018, whereby, amendments were made in GME Regulations, 1997, declaring certain categories of candidates to be ineligible and thereby disqualifying them from appearing in the National Eligibility cum Entrance Test (NEET) for admission to the MBBS Course. Paragraph No.61 of the said decision is being reproduced 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 Council 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”.

23. A perusal of the discussion made in paragraph No.61 of the said decision would clearly indicate that the requirement of two year study with relevant subjects has not been dispensed with. The case of the petitioner is not that she has undergone two year study with relevant subjects as mandated under GME Regulations, 1997.

24. Similarly, the decision relied upon by the learned counsel for the petitioner in the case of ***Tanishq Gangwar & Ors. (supra)*** would also not be of any help to the petitioner. The said decision is based on the case of ***Anshul Aggarwal (supra)***, where it has been specifically held that last two years (Class 11th & 12th) subjects, of Physics, Chemistry, Biology and Mathematics with English will not be diluted or interfered with.

25. However, the issue in hand has been conclusively decided by the Hon'ble Supreme Court in the case of ***Kaloji Narayana Rao University of Health Sciences (supra)***. Paragraph Nos. 14, 15, 21 & 22 of the said decisions are reproduced as under:-

"14. A careful reading of the said provision discloses that the MCI emphasized 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/Bio-technology. In this case, the certificate relied upon by the student 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 that the AP course in Biological Sciences is of college standard.

15. 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 concerned years) 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.

21. *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 State of Bombay v. R.M.D. Chamarbaugwala interpreted the definition of a 'prize competition'. 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.*

22. *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”.*

26. The Division Bench of this court in the case of **Ishan Kaul** (*supra*) has also taken a similar view in paragraph No.20 of the said decision. The same is reproduced as under :-

“20. In view of the above reasoning, it is held that a citizen of India is entitled to study and possess any primary medical qualification in any institute mentioned in Regulation 4 of Screening Test Regulations. Such institute/university need not be recognized and authorized by MCI. A candidate must also satisfy the eligibility requirements mentioned in the Eligibility Regulations and obtain an eligibility certificate from MCI before he proceeds abroad to take admission in a foreign university/college for possessing primary medical qualification. Screening Test Regulations have to be complied with. The appeal and the writ petition are accordingly allowed to the extent stated above. No costs.”

27. The same principles have been followed in the case of **Rohinish Pathak (supra)**. The decision of **Rohinish Pathak (supra)** has also been affirmed by the Hon'ble Supreme Court while dismissing the Special Leave Petition.

28. The insistence of MCI/NMC on the requirement of subjects in the last two years of studies being essential is based on the footing that such study necessarily assimilates periodic practical and evaluation of the students and his/her aptitude in such activity which is vital for the study of Medicine. This has been noted by this court in the case of **Raghukul Tilak (supra)**. Paragraph Nos.18, 21 and 22 of the said decision are reproduced as under:-

"18. The MCI's insistence on the last two years study in each subject being essential is on the footing that such study necessarily assimilates periodic practicals, and evaluation of the student (and his aptitude) in such activity, which is vital for a study of medicine. It is stressed that such insistence is not an empty or ritualistic exercise, but a matter of standards, having regard to the nature of medical education.*

21. If the above principles are to be kept in mind, the scope of the court's determination would be a restricted one, to examine whether the interpretation placed by such an expert body as the MCI is plausible, and whether it is on the whole reasonable, and non-arbitrary.

22. Viewed from such a perspective, it is evident that the expression "comprising" of in Code 01 qualifies the requirement of having to study 2 years in each of the subjects. The express mention of practicals, along with the expression "comprising" in the context, therefore, assumes significance. As a result, the conclusion reasonably deducible would be that the student is required to have undergone a course of study in the 10+2 pattern, with the last two years comprising study, with practicals, in Physics, Chemistry and Biology. If the other interpretation is preferred, hypothetically, a student who does not undergo training for 2 years in any or all of the three subjects, but who qualifies in some subsequent additional or supplementary examination would also be eligible. Though this interpretation appears tenable, on a textual interpretation of Code 06, a deeper scrutiny would reveal that such construction is impermissible. One, the Proviso to Code 06 dealing with students of Indian nationality who study abroad, too, should have qualified in all the three subjects after having studied up to 12th standard level in those subjects. This reinforces the continuous nature of education for the last two years. Two, the issue is not merely of interpretation of an

ambiguous provision, but construction of minimum standards, which are essential."

29. Notably the decision of ***Raghukul Tilak (supra)*** has been affirmed in LPA No.2033/2006 (*supra*) and the decision of the Division Bench in LPA was also not interfered with by the Hon'ble Supreme Court in SLP (C) No.13571/2007. A similar view has been taken in the case of ***Rubab (supra)*** and in the case of ***Mohammad Parvez Akhtar (supra)***.

30. A similar view is taken by the Division Bench of the Hon'ble High Court of Madhya Pradesh in the cases of ***Sohan Chauhan (supra)*** and ***Ku. Aprna Patle (supra)***.

31. In the instant case, neither the Regulations are under challenge nor the communication dated 08.09.2022 (*Annexure R-2/28*) issued by National Medical Commission is assailed. Nevertheless, this court considered the submissions made by learned counsel for the petitioner on merit so as to examine whether the petitioner fulfils the criteria for the issuance of the eligibility certificate in accordance with the applicable Regulations of 2002. The Regulations, as they exist today, have been framed by MCI/NMC, which is the expert body and can lay down the criteria for grant of eligibility certificate to a person to practice Medicine. Practising in the medical field involves taking care of a patient and his or her management, the act of such a nature requires specialised training and knowledge. The nature of services to be rendered by medical practitioner necessarily involves the larger public interest. A person who is not duly qualified, as prescribed by MCI/NMC, cannot be permitted to involve himself in public health care and play with the lives of the human beings. It is not for this court to decide as to whether the knowledge acquired by the petitioner while studying in Ukraine is sufficient for granting her eligibility certificate

to appear in the eligibility test or not. Since the petitioner does not fulfil the criteria for her entitlement to obtain eligibility certificate, this court is not inclined to issue any directions in that respect.

32. Accordingly, the petition stands dismissed alongwith pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

FEBRUARY 02 , 2023

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