

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17595 of 2023

Navnit Raj Son of Sri Harendra Prasad Singh, Advocate Patna High Court,
Resident of Mohalla Gopalganj, P.S.- Rajeev Nagar, and Ward no.- 14, Dis-
trict- Gopalganj.

... .. Petitioner/s

Versus

1. The Union of India through the Secetary, Ministry of Health, New Delhi.
2. The Director General of Health Service, Nirman Bhawan, Maulana Azad Road, New Delhi- 110011.
3. The Secretary National Medical Commission New Delhi Pocket- 14 Sector - 8, Dwarika Phase- 1, New Delhi- 110077.
4. The Secretary Health Department Govt. of Bihar, New Secretariat, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar Mr. Adesh Raj
For the Respondent/s	:	Mr. Jitendra Kumar Roy-I, SC 13 Mr. B.B. Prasad AC to SC 13
For the NMC	:	Mr. Kumar Priya Ranjan Sr. SC Mr. Sandeep Kumar, Advocate Mr. Vibhuti Kumar, Advocate Mr. Prasoon Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 21-02-2024

Heard the parties.

2. By way of this writ petition the petitioner has
prayed for the following reliefs as quoted below:-

- i). For issuance of appropriate writ/s
(Mandamus) directing the National Medical Commission, New



Delhi to allow the transfer of the petitioner from Danylo Halytsky Lviv National Medical University, Ukraine to any other country, a continues war is going on between Ukraine & Russia, due to which Petitioner is unable to attend the class in Ukraine, as such Respondent is also directed to allow the transfer of petitioner from Ukraine to any other country to ignoring the F.M.G.L Regulation, 2021 which debars such students whose classes are started subsequent to 18 Nov 2021, due to global Pandemic (Covid-19) the petitioner class could not be started prior to 18 Nov 2021. Hence for the fault of Covid-19 calamity innocent petitioner could not suffer. Let it also be liberty that government of India also issue the advisory to the students of the India cannot go in Ukraine due to continues war between Russia and Ukraine.

ii. For directing the National Medical Commission, New Delhi for exemption and clarification from Notification dated 18-11-2001 issued the by the respondent No-3 where by the Petitioner apprehends that the Gazette of India containary the National Medical Commission notification dated 18.11.2021 is illegal, arbitrary and mala fide on forthrightly farmed against the people like petitioner being a foreign medical student and its Rules 4, 5(2) and the Schedule-I, Criteria applying for license of



payment of registration to practice in Indian are to be ultra vires.

3. The brief facts of this case are that the petitioner is an Indian Medical Student studying at Danylo Halytsky Lviv National Medical University, Ukraine. He has taken admission in the aforesaid institution for the academic session 2021-2026 in pursuance of the admission letter and invitation letter issued by the University and the admission letter and invitation letter and fee receipts were issued prior to the New Regulation dated 18.11.2021, but due to Pandemic of Covid-19 (hereinafter referred to as the Pandemic), the classes of the petitioner started from 6.12.2023 but the first semester session was completed on time and now the petitioner has successfully completed his fourth semester. Now, the National Medical Commission (hereinafter referred to as N.M.C.) has confused the student by an answer of the frequently asked question. As per the Regulation of 18.11.2021, only the word “Admission” was mentioned but in the reply given to the frequently asked question, the N.M.C. has barred the students whose classes were started with a delay due to Pandemic but as per the Regulation of 2002 of the M.C.I., there was a special provision for the students who suffered due to the pandemic and war like situation.



4. It is the contention of the petitioner that the pandemic was a world crisis and the whole world suffered due to the same. The classes of Schools, Colleges and Universities were delayed and because of the same the classes of the petitioner was also delayed and the principles of Clause 4 and 5 of the Regulation dated 18.11.2021 are against the principle of natural justice as a student studying in a foreign country cannot be debarred from taking transfer from one country to another.

5. According to the petitioner, the petitioner has sent a representation through E-mail to the respondent authorities mentioning his doubts regarding Clause 4 and 5 of the N.M.C. notification dated 18.11.2021 but respondent authorities are sitting tight over the matter. The petitioner has also sent a legal notice dated 12.05.2023 to the respondent no. 2 i.e. the Director, N.M.C and respondent no. 3 i.e. the N.M.C. itself but they have not replied to the same also.

6. It has further been contended by the petitioner that Danylo Halytsky Lviv National Medical University, Ukraine is one of the oldest Universities in Ukraine which was opened on 16th November, 1784 but now the war between Russia and Ukraine has extended to the western part of the Ukraine, where the university is situated and as per the advisory



of Government of India, the Government has restricted the people from visit to Ukraine and because of the same the petitioner will not be able to attend his classes in physical mode at Ukraine. It was further been contended by the petitioner that the life and career of the petitioner is in danger so the respondents may be directed to allow the petitioner to take transfer from Danylo Halytsky Lviv National Medical University, Ukraine to any other country.

7. The first relief sought by the petitioner has already been redressed as he has already been transferred from Danylo Halytsky Lviv National Medical University, Ukraine to Tashkant Medical College, Russia.

8. The second relief sought by the petitioner is to the effect that a direction may be issued to the N.M.C. to exempt the petitioner from the applicability of notification dated 18.11.2021 issued by the N.M.C.

9. It has been submitted by the learned counsel for the petitioner that the Regulations of 2021 which came into force on 18.11.2021 are not applicable to the Foreign Medical Graduates who have acquired a foreign Medical degree or primary qualification and to the students who are pursuing their education in foreign institution prior to 18.11.2021.



10. It has further been submitted by the learned counsel for the petitioner that the petitioner satisfies the requirement under Regulation 5(b) of Regulation dated 18.11.2021. The admission letter of the petitioner was issued on 06.09.2021, the invitation letter was issued on 27.09.2021, fee was paid on 8.11.2021 and the classes were started from 6.12.2021.

11. It has further been submitted by the learned counsel for the petitioner that the connotation of expression “Pursuing their Education” as indicated in Regulation 5(b) of Regulation of 2021 means that the petitioner is in the process of taking courses but have not yet obtained the actual degree. The expression "Pursuing their Education" will subsume pre-class stages to actual start of classes. The applicability of Regulation of 2021 cannot be made dependent only on start of classes as on 6.12.2021 but its applicability has to be considered on touchstone of offer letter of invitation, letter of admission, letter of deposit of fees. The interpretation of expression "Pursuing their education" will entail all previous stages before starting of classes since it will determine the legal meaning of said expression.

12. It has further been submitted that Respondent



No.3 cannot be oblivious of ground realities, i.e. war between two countries, which compelled the petitioner to leave the country i.e. Ukraine.

13. It has further been submitted that as far as interpretation of regulation 5(b) of Regulations of 2021 is concerned, purposive interpretation should be adopted to advance the object of ensuring completion of education. The meaning of the words, i.e. "Pursuing their Education" in foreign institution is to be given on the basis of its appropriateness with reference to the scheme of the Regulations and the rules of construction will also include creative interpretation.

14. It has further been submitted by the learned counsel for the petitioner that Russia-Ukraine war was on its top in the initial days while the students were in trouble to save their own life and the students, to save their lives first went to the Poland border on 28.02.2022 and when the Poland Government refused to take the Indian students inside their territory, the Indian Government issued new advisory for the Indian Students for their return to their own College and said that agents will evacuate the students from Ukraine and the students were evacuated from the Indian Air Force Carrier Aircraft on 03.03.2022.



15. It has further been submitted by the learned counsel for the petitioner that a Statute must be construed according to the intention of the legislature. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the legislature and in this connection, in Paragraph 18, the following observation has been made by Hon'ble Supreme Court in the case of ***District Mining Officer v. TISCO (2001) 7 SCC 358:-***

'18. A Statute is an edict of the legislature and in construing a Statute, it is necessary, to seek the intention of its maker. A Statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a Statute where its application may be called for. Nonetheless, the function of the courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived



from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words, the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

16. It has further been submitted by the learned counsel for the petitioner that the Hon'ble Supreme Court in the case of ***Macquarie Bank Limited Versus Shilpi Cable Technologies Limited (2018) 2 SCC 674*** has dealt with the concept of creative interpretation in order to understand the intention of legislature. Paragraph 27, 28, 29 and 30 of the aforesaid judgment reads as follows:-

'27. Equally, Dr Singhvi's argument that the Code leads to very drastic action being taken once an application for insolvency is filed and admitted and that, therefore, all conditions precedent must be strictly construed is also not in sync with the recent trend of authorities as has been noticed by a concurring judgment in Eera v. State (NCT of Delhi) [(2017) 15 SCC 133 : (2018) 1 SCC (Cri) 588] decided on 21-7-2017. In this judgment, the correct interpretation of Section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012 arose. After referring to the celebrated Heydon case [Heydon case,



(1584) 3 Co Rep 7a : 76 ER 637], and to the judgments in which the golden rule of interpretation of Statutes was set out, the concurring judgment of R.F. Nariman, J., after an exhaustive survey of the relevant case law, came to the conclusion that the modern trend of case law is that creative interpretation is within the Lakshman Rekha of the Judiciary. Creative interpretation is when the court looks at both the literal language as well as the purpose or object of the Statute, in order to better determine what the words used by the draftsman of the legislation mean. The concurring judgment then concluded: (Eera case [Eera v. State (NCT of Delhi), (2017) 15 SCC 133 : (2018) 1 SCC (Cri) 588], SCC p. 204, para 127):

'127. It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the 'Lakshman Rekha' has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon [Heydon case, (1584) 3 Co Rep 7a: 76 ER 637], where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case [Heydon case, (1584) 3 Co Rep 7a: 76 ER 637], which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid- 1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon case [Heydon case, (1584) 3 Co Rep 7a: 76 ER 637].

'28. In dealing with penal Statutes, the Court was confronted with a body of case law which stated that as penal consequences ensue, the provisions of such Statutes should be strictly construed. Here again, the modern trend in construing penal Statutes has moved away from a mechanical incantation of strict construction. Several judgments were referred to and it was held that a purposive interpretation of such Statutes is not ruled out. Ultimately, it was held that a fair construction of penal Statutes based on purposive as well as literal interpretation is the correct modern day approach.

29. However, Dr Singhvi cited Raghunath Rai Bareja v. Punjab National Bank (2007) 2 SCC 230 and



relied upon paras 39 to 47 for the proposition that the literal construction of a Statute is the only mode of interpretation when the Statute is clear and unambiguous. Para 43 of the said judgment was relied upon strongly by the learned counsel, which states: (SCC p. 244)

'43. In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn., pp. 45-49).

Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection."

30. Regard being had to the modern trend of authorities referred to in the concurring judgment in Eera [Eera v. State (NCT of Delhi), (2017) 15 SCC 133: (2018) 1 SCC (Cri) 588], we need not be afraid of each Judge having a free play to put forth his own interpretation as he likes. Any arbitrary interpretation, as opposed to fair interpretation, of a Statute, keeping the object of the legislature in mind, would be outside the judicial ken. The task of a Judge, when he looks at the literal language of the Statute as well as the object and purpose of the Statute, is not to interpret the provision as he likes but is to interpret the provision keeping in mind Parliament's language and the object that Parliament had in mind. With this caveat, it is clear that Judges are not knight-errants free to roam around in the interpretative world doing as each Judge likes. They are bound by the text of the Statute, together with the context in which the Statute is enacted; and both text and context are Parliaments', and not what the Judge thinks the Statute has been enacted for. Also, it is clear that for the reasons stated by us above, a fair construction of Section 9(3)(c), in consonance with the object sought to be achieved by the Code, would lead to the conclusion that it cannot be construed as a threshold bar or a condition precedent as has been contended by Dr Singhvi.'



17. It has further been submitted by the learned counsel for the petitioner that the words and expression as used in Regulation 5(b) of Regulations of 2021 are required to be understood and interpreted not because they suffer from ambiguities or lack of clarity but because these ordinary expression may not effectively transform the true ideas and policies as intended by the legislature, when the provisions are put into practical implementation.

18. In support of his submissions, learned counsel for the petitioner has further relied upon the Judgment of Hon'ble Supreme Court in the case of *Omkar Singh and Others Vs. State of Uttar Pradesh Others* reported in **(2021) 14 SCC 486**. It would be relevant to quote paragraph nos. 4.3, 7.1, 7.3, 7.4 which reads as under:-

4.3. *The eligibility for TET examination has been provided in Para 5 of the Guidelines as under:-*

"5. Eligibility -The following persons shall be eligible for appearing in TET:

(i) *A person who has acquired the academic and professional qualifications specified in NCTE Notification dated 23-8-2010.*

(ii) *A person who is pursuing any of the teacher education courses (recognised by NCTE or the RCI, as the case may be) specified in NCTE Notification dated 23-8-2010;*

(iii) *The eligibility condition for appearing in TET may be relaxed in respect of a State/UT which has been granted relaxation under sub- section (2) of Section 23 of the RTE Act. The relaxation will be specified in the notification issued by the Central Government under that sub- section." (emphasis supplied)*



7.1. *The issue involved in the present appeals is the meaning and interpretation of the word "pursuing" as appearing in Clause 5(ii) of the NCTE Guidelines. The question for consideration is the eligibility criteria to appear in TET examination. It is apparent from the reading of the guidelines framed by NCTE, Para 5 that the incumbents who have acquired the qualification academic as well as professional can apply for TET examination. The second category of candidates who can apply for TET examination is those who are pursuing" any teacher training course ("TTC"). The meaning of "pursuing" is a person who is undergoing any of the teacher training course ("TTC"). He/ she must have been admitted and pursuing the teacher training course which is prescribed as a qualification. Declaration of the result, appearing in the examination or date of filling up of the forms, etc. cannot be the criteria to appear in TET examination. Therefore, a candidate who is undergoing i.e. "pursuing" the requisite teacher training course ("TTC") shall be eligible to appear in T.E.T. examination.*

7.3. *Looking to the clear wordings in clause 5(ii) of the NCTE Guidelines and the phrase used is "pursuing", the High Court is not justified in adding the additional riders, such as, that to become eligible for appearing in TET examination, a candidate must have appeared in the TTC examination and the result have not been declared by the last date specified for filling up the online form for TET examination. As per the dictionary meaning, the word "pursuing" means undergoing and/or proceeding further. Therefore, a candidate who has been admitted in any of the TTC and undergoing the teacher training course (ITC) can be said to be "pursuing" such teacher training course and shall be eligible to appear in TET examination, irrespective of the fact that whether, by the last date specified for filling up the online form for TET examination, he has, in fact, appeared in the examination of the teacher training course concerned and the result is awaited "Pursuing" the requisite teacher training course is sufficient to make such a candidate eligible to appear in TET examination. Therefore, on a fair reading of clause 5(ii) of the NCTE Guidelines, a person who has been admitted in TTC and is pursuing, he/she can appear in TET examination. In the present case, admittedly, on the cut-off date, all the candidates were pursuing the teacher training course concerned Thereafter, all of them have cleared TET*



examination as well as have cleared the teacher training course concerned. At the time when they were appointed as Assistant Teachers, all of them fulfilled the eligibility criteria for appointment as Assistant Teachers. All of them have passed TET examination and have also passed the TTC as per the requisite eligibility criteria. Thus, in our view, ousting certain incumbents by the High Court cannot be sustained since they were pursuing TTC and they were clearly eligible to appear in TET examination and have passed it while pursuing the requisite professional qualification for being eligible to be appointed as Assistant Teachers.

7.4. It is not permissible to add riders as done by the High Court. The phrase "pursuing" is to be given literal meaning. The expression "rule of literal construction" lays down that words of a statute are first understood in their natural, ordinary or popular sense and phrases, and sentences are construed according to their grammatical meaning. The learned author G.P. Singh in Principles of Statutory Interpretation has observed.

19. Learned counsel for the respondent no. 3 has filed his counter affidavit and has opposed the application of the petitioner.

20. It has been submitted by the learned counsel for the respondent that the respondent has issued a public notice dated 07.12.2023 which reads as under:-

1. Issues Related to FMGs from Ukraine:-

I. FMGs had a break in their final year and returned to India (Owing to avoid pandemic or war) and completed FMG course (including examination) through online mode.

II. FMGs had a break in Penultimate year of study (Owing to covid pandemic or war) and completed FMG course (including examination) through online mode.

III. Allowing FMGs from Ukraine



to continue their study from different countries (Except India)

Those candidates who have joined the course (equivalent to MBBS in India), physically in Ukraine/Russia on or after 18.11.2021, and have returned were evacuated during the war period (i.e. evacuation period of Operation Ganga w.e.f. 26.02.2022 to 11.03.2022) in a medical institute of either Ukraine or Russia shall be given permission to transfer/migrate to any other country (except India) to complete their study as per FMGL regulations dated 18.11.2021 and procure certificate which grants them license to practice Allopathy in that country. This permission for migration shall be specific for these students only who returned to India till 31st March, 2022.

21. It has further been submitted by the learned counsel for the respondent no. 3 that the case of the petitioner is that he was admitted in the aforesaid course in Ukraine before 18.11.2023 but it is very difficult to find out from the petition as to when the petitioner came back to India and the notice dated 07.12.2023 permits such FMGs to take migration only who returned to India till 31st March, 2022 and therefore in order to avail the benefit of abovementioned public notice, the date of return of the petitioner is required to be verified.

22. In support of his submissions, learned counsel for the respondent no. 3 has also relied upon the judgment of the Hon'ble Supreme Court in the case of ***Aravinth R.A. Versus Secretary to the Government of India, Ministry of Health and Family Welfare and Others*** reported in ***2022 14 SCC 280***.



23. I have heard the parties and have perused the materials available on record.

24. This Court has to decide, as to whether the Regulation notified by the notification dated 18.11.2021 shall be applicable in the case of the petitioner or not and whether the petitioner is exempted from the applicability of this regulation as per the regulation of 5(b) dated 18.11.2021.

25. It is an admitted position that the petitioner's offer letter for admission was issued on 27.09.2021 and the petitioner was admitted on 08.11.2021 upon payment of fees and his classes started on 6.12.2021.

26. It is the contention of the petitioner that the interpretation of regulation 5(b) of the year 2021 i.e. amendment of the words "Pursuing their Education" in foreign institution is to be given on the basis of its appropriateness with reference to the scheme of regulation.

27. In the case of *Omkar Singh and Others Vs. State of Uttar Pradesh and Others (Supra)* also the question was with regard to Clause 1 of Paragraph 5 that a person who has acquired his academic and professional qualification as per the notification dated 23.08.2010 can appear in TET examination and a person who is pursuing any of the teacher



education courses recognized by NCTE or the RCI was eligible.

28. The Hon'ble Supreme Court has also held that the words "Pursuing their Education" means a person either he or she must have been admitted and pursuing the teacher training course which is prescribed as a qualification and the person should have been admitted in the course.

29. A candidate who has been admitted in any of the TET Course can be said to be pursuing such teacher training course and shall be eligible to appear in the TET examination and no rider should be attached by the High Court.

30. The phrase pursuing is to be given a literal meaning. In the present case also the regulation dated 18.11.2021 is not applicable to the candidates who are pursuing their education in foreign institution prior to the coming into force of these regulations.

31. Considering the aforesaid facts, this Court is of the view that the judgment relied upon by the learned counsel for the respondent no. 3 is not applicable to the case of the petitioner as the petitioner was admitted on 08.11.2021 and is pursuing his education in foreign institution which is well before the coming into force of the regulation as notified on 18.11.2021 and therefore the petitioner is eligible for



examination under the notification. This interpretation is the true interpretation of the legislature.

32. With the aforesaid observations and directions, this application stands allowed and the notification dated 18.11.2021 issued by the respondent no. 3 is not applicable to the case of the petitioner.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

