

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jay Sengupta

WPA 15993 of 2024

Shayan Saha & Ors.

Vs.

National Medical Commission & Ors.

For the petitioners	:	Mr. Jaydip Kar, Sr. Adv., Mr. Pijush Biswas, Mr. Pushpashish Gupta, Ms. Srijoni Chongdar. Advocates
For the State	:	Mr. P. K. Bhattacharyay Advocate
For the respondent no.6	:	Mr. Billwadal Bhattacharyya, Mr. Abhisek Baran Das, Mr. Tamoghna Pramanick.Advocates
For the respondent no.3	:	Dr. Debu ChowdhuryAdvocate
For the NMC	:	Mr. Indranil Roy, Mr. Sunit Kr. Roy.Advocates

Heard lastly on : 04.10.2024

Judgment on : 12.11.2024

Jay Sengupta, J:

1. This is an application under Article 226 of the Constitution of India praying for directions upon the respondents, especially the respondent nos. 3 and 4 to issue FMGE pass certificates to the petitioners and the respondent no. 5 to accommodate the petitioners in the compulsory rotating medical internship positions in affiliated medical colleges and hospitals in West Bengal.

2. Learned senior counsel representing the petitioner submitted as follows. The petitioners, after obtaining eligibility certificates from the Medical Council of India, got admitted in the Doctor of Medicine (MD) programme at Lincoln University College, Malaysia in the academic session 2018-19. It was not disputed that the MD Degree offered by Lincoln University College, Malaysia was a recognized degree for the purpose of practice of modern medicine in Malaysia (Ref. Medical Act 1971, Malaysia; Section 12(1)(a)(i) read with Second Schedule of the said Act). It was also undisputed that the said degree was recognised in India as a primary medical qualification obtained from foreign university. The petitioners successfully completed the said course and were awarded MD Degree by Lincoln University College, Malaysia. Copies of course completion certificates and degree certificates were appended to the writ petition. The said

University also issued certificates certifying that the said degree was one of the recognised qualifications under Malaysian Law. The said certificates also clearly stated that the petitioners had attended the MD course partly in the main campus of the University in Malaysia and partly in Sanjiban Hospital Campus, Uluberia, West Bengal, a recognised off-shore campus of the University. On completion of the MD course, the petitioners appeared in the Foreign Medical Graduate Examination, 2023 (Screening Test) conducted by the respondent no. 3. Though the result of the said examination was published and the petitioners qualified in the said examination, they were not issued FMGE pass certificates by the respondent no. 3 since March, 2024. Copies of the FMGE-2023 score cards of the petitioners appeared in the writ petition. Due to non-receipt of FMGE pass certificates, the petitioners could not join the internship programme in different medical colleges and hospitals under the respondent no. 5. In response to the public notice regarding internship programme published by the respondent no. 5, all the petitioners applied but their applications were not considered as the respondent no. 5 had been insisting on production of FMGE pass certificates. The petitioners took admission in their Foreign Medical Course in 2018-19 academic sessions when the Indian Medical Council Act, 1956 was in vogue. Recognition of medical qualification granted by medical institution situated in any country outside India was dealt with by Section 13(4A) and (4B) of the Indian Medical Council Act, 1956. Section 13(4A) prescribed that for being eligible for enrolment in India, an Indian citizen, having medical qualification granted by any medical institution in any

country outside India recognised for enrolment as medical practitioner in that country, must qualify the screening test in India. Section 13(4B) prescribed that an Indian citizen must obtain eligibility certificate from the Indian Medical Council to be eligible to get admission to any medical institution in any foreign country. Otherwise, such person would not be eligible to appear in the screening test as prescribed under Section 13(4A). The legislative scheme as was provided under the 1956 Act prescribed three requirements for an Indian citizen desiring to obtain foreign medical degree to be eligible to practice medicine in India. (i) before admission in the foreign medical institution, the student should have obtained eligibility certificate from the Indian Medical Council. (ii) After completion of the course and before getting enrolment in India, the student must qualify the screening test in India. (iii) The foreign degree obtained by the candidate should be recognised as a valid medical qualification in that country in which the medical institution awarding the degree was situated. The legislative scheme was guided by Sections 13(4A) and 13(4B) of the Medical Council Act, 1956; the Foreign Medical Institution Regulation, 2002 and the Screening Test Regulation, 2002. Following the legislative scheme, the petitioners: i) Obtained eligibility certificate, ii) Obtained foreign medical degree, iii) Passed the Screening Test Examination. The petitioners were, thus, eligible to be enrolled for the medical internship and move forward in their career in medicine. It was pertinent to note that the requirement of completion of entire course, training and internship outside India in the same foreign medical institution throughout the course of study had been implemented

vide para 2(iii) of Schedule-I of FMGE Regulation, 2021 for students who were admitted to PMQ on or after 18.11.2021. The regulation prior to FMGE, 2021 did not provide for a mandatory onsite campus study in the same country for the entire period. The defence raised by respondent No. 1 National Medical Commission were - that the medical course completed by the petitioners were in violation of Regulation 9 of Eligibility Requirement Regulation, 2002; that the entire course was not studied in Malaysia; that the NMC came to know about the offshore campus only through the communication of the letter dated 07.06.2024 of the respondent no. 4; that the offshore campus was not a recognised Medical Institution within the meaning of Section 10A of the Act of 1956; that the petitioners were not entitled to FMGE pass certificates, nor were they entitled to be enrolled for compulsory rotating medical internship. The legislative scheme of medical studies underwent a change with the promulgation of National Medical Commission Act, 2019. The National Medical Commission in exercise of powers conferred under Section 57 read with Section 15(4) of the National Commission Act, 2019, made National Medical Commission (Foreign Medical Graduate Licentiate) Regulation, 2021. This Regulation was, admittedly, not applicable for petitioners who were already pursuing their education in foreign institution by the time the change in law took place (Reference Regulation 5 of the 2021 Regulation). In the Schedule – I of the said Regulation under Clause 2(III), it had been prescribed that “the entire course, training and internship or clerkship shall be done outside India in the same foreign medical institution throughout the course of study and no

part of medical training and internship shall be done in India or any other country from where the primary medical qualification is obtained.” It was worthy to be noted that this specific provision regarding entire medical training and internship to be done in the foreign country and not in India was not present in the earlier legislative scheme under the Act of 1956 and the legislature in its wisdom made the new provision prospective. This was explicit from Regulation 5 and Schedule – I of the Regulation of 2021. In such a scenario, the attempt of the respondent no.1, National Medical Commission to apply this prohibition retrospectively with respect to the petitioners who are governed by the legislative policy of the 1956 Act was wholly unjustified. The averments of the National Board of Examination contained in paragraph 4(V) and 4(VI) of its affidavit admitted this legal position. The National Medical Commission had contended that the students, while obtaining their eligibility certificates, never disclosed that they would also undertake a part of their course at Sanjiban Hospital, Howrah. This contention was misconceived as because application for eligibility certificates were to be made in prescribed proforma of the respondents (Reference Regulation 4 of the Eligibility Requirement Regulation, 2002). The question of disclosure was also not necessary as explained in various judicial pronouncements. The contention of the National Medical Commission that under the proviso to the Regulation 9 of the Eligibility Requirement Regulation, 2002, the entire study of the medical course must be at the same institute located abroad for the entire duration of the course from where, he/she has obtained the degree” had also been

interpreted otherwise in judicial precedents. The said proviso has been interpreted as applicable when a student got admitted in Institute 'A' and subsequently, got transferred to Institute 'B'. The purpose of the said Regulation, as explained by MCI itself, was to restrict candidates from shifting colleges (Rohit Naresh Agarwal's Case, reported at 2013 SCC Online Del 3904). This proviso was clearly not applicable when a student attended the same course partly offshore campus of the same institute. Sanjiban Hospital, Uluberia was a campus of Lincoln University College, Malaysia. Under the definition of 'medical institution' prescribed in Section 2(e) of the 1956 Act, a medical institution was an institution which grants degrees, diplomas or licenses, etc. Here, the degree was granted by Lincoln University College, Malaysia only. Sanjiban, merely being a campus, did not grant any degree. So, there was no change in institution by the petitioners throughout the duration of their entire course. This stand was also supported by respondent no.3. Therefore, the contention of the respondent NMC that the eligibility certificates of the petitioners were liable to be cancelled was clearly misplaced and contrary to judicial dicta. In the course of hearing, it was submitted by the respondent National Medical Commission that no one could teach medicine in India without the approval of National Medical Commission, previously the Medical Council of India. The respondent NMC heavily relied upon Section 10-A of the Indian Medical Council Act, 1956. Relying upon the said provision, it was submitted that as the petitioners underwent the major part of their course in Sanjiban Campus (not a recognised medical college by MCI) and the duration of stay of the

petitioners in Malaysia was more or less two months; the petitioners were not eligible for being granted of FMGE pass certificates. This contention was also equally misconceived. Section 10-A of the 1956 Act was applicable for establishment of medical colleges in India. Sanjiban was an offshore campus of Lincoln University College, Malaysia. The term 'offshore campus' had been defined in Advanced Law Lexicon by P. Ramanatha Aiyar, 7th Edition, Vol-3 as "offshore campus means an institution", college centre, school or campus of the university that could be established outside the country." The argument of applicability of Section 10A with respect to foreign medical universities had already been considered in Medical Council of India Vs. J. Saai Prasanna and Ors., reported at (2011) 11 SCC 748 where the same argument by the Medical Council of India was negated. While rejecting the said contention, it was held by the Hon'ble Supreme Court that medical qualifications granted by medical institutions outside India were governed under Section 13(4A) of the 1956 Act. It was observed that with respect to a foreign medical institution, it was the norms of the country where the medical institution was situated, would have to be fulfilled and the norms prescribed by the Indian Medical Council Act, 1956 with regard to Indian Medical Institution would have no relevance. In the said judgement, it was also held by the Hon'ble Apex Court that in the case of persons who obtained a medical qualification in the medical institution outside India, the question as to where the course of study was undergone was not relevant. If the norms of the foreign country permitted, the course of study would be partly in that country and partly in any other country including India. Once

that country recognised the medical qualification and such medical degree holder passed the screening test in India, the Medical Council of India could not refuse to recognise such degree on the ground that the student did a part of his study in offshore campus in India as a part of his medical study programme for the foreign institution. In this context, reliance was placed also on Sai Prasanna Case (supra). This was also considered and followed in the Rohit Naresh Agarwal Judgement (supra). It had been unequivocally held that by the Hon'ble Division Bench of the Hon'ble Delhi High Court that any attempt on the part of the Medical Council of India to regulate the affairs of a foreign university was beyond its power. In fact, in the case of Prashant Kumar Gupta Vs. Medical Council of India, reported at 2013 SCC Online Del 3913, this principle was re-iterated. The respondent NMC relied upon the judgement of National Medical Commission Vs. Pooja Thandu Naresh and Ors., reported at (2022) 13 SCC 56. However, the factual scenario of the said case was different. In the said case, the students attended a part of their course online, whereas the petitioners here had attended the full course including practical classes off-line. However, it was interesting to note that in the said case also, the Hon'ble Apex Court had observed that the students having finally obtained certificates from a foreign institute were national resources which should not be wasted affecting the life of the young students. The petitioners are all bright young students. They completed the undergraduate medical course from Lincoln University College, Malaysia and their degree was recognised in Malaysia. The degree granted by their University was also recognised in India. The students had

valid eligibility certificates. After completion of their undergraduate course, they appeared in the Foreign Medical Graduate Examination – 2023 (screening test). A total of 61616 candidates appeared in the said examination, but only 10261 candidates passed, the rate of success was only 16.65% (“Reference Country/Institute wise performance in FMGE-2023” published by the respondent no. 3). Therefore, the petitioners already proved their suitability. Grant of FMGE pass certificates would simply entitle them to complete internship and only after completion of internship the petitioners could get permanent enrolment to move forward. In the internship, they would further undergo hands on clinical training and evaluation in all the important clinical subjects under the groups of community medicine, general medicine, general surgery, obstetrics and gynaecology. Only after successful completion of internship and evaluation, the petitioners would be granted permanent registration. It had been clearly demonstrated in the preceding paragraphs that under the applicable legal framework, the FMGE pass certificates of the petitioners could not be withheld. This fact was also admitted by the respondent no. 3 in its affidavit.

3. Learned counsel representing the National Medical Commission submitted as follows. The petitioners pursued Doctor of Medicine (MD) at Lincoln University College, Malaysia. On completion of the said course, the petitioners appeared in the Foreign Medical Graduate Examination (Screening Test) in December, 2023 held on 20.01.2024. Though result of the said examination was published, the petitioners were not issued FMGE

Pass Certificates by the National Board of Examinations in Medical Sciences and were consequently, unable to undergo compulsory rotating medical internship. Hence, the instant writ petition. For taking admission in an undergraduate medical course in a Foreign Medical Institution, the petitioners were required to comply with the Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Institution Regulations, 2002 (hereinafter, referred to as the “Eligibility Requirement Regulations, 2002”) as framed by the Medical Council of India. The proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002, inter alia, provided that “he/she has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree”. By a letter dated 07.06.2024, the National Board of Examination in Medical Sciences, inter alia, informed the National Medical Commission that during verification process for distribution of FMG pass certificates to qualified candidates, it was found that a number of candidates claimed enrolment for their PMQ in Malaysia, but did not actually undergo studies there. Instead these candidates resided in Malaysia for a period of approximately two months, while their actual medical education took place in West Bengal, India at Sanjiban Hospital and College, Howrah, West Bengal. While obtaining Eligibility Certificate, the petitioners never disclosed that the entire course would be conducted at Sanjiban Hospital and College, Howrah, West Bengal and the petitioners would only be in Malaysia only for two months and that too at the end of the 5 year course. The Eligibility Certificate, inter alia, recorded that as per

particulars/documents and the declaration submitted by the candidate, such candidate was eligible to apply for admission in a foreign medical institution for pursuing graduate medical course leading to 'Primary Medical Qualification' as per the Eligibility Requirement Regulation, 2002. It was also recorded therein that "It is further stated that this certificate is issued only on the basis of particulars/documents submitted by the applicant (without verification)." Further, the terms and conditions attached to the Eligibility Certificate clearly stated that this eligibility certificate was issued exclusively on the basis of information /documents/ declaration/affidavit / undertaking furnished by the applicant. The Medical Council of India should be free, if deemed appropriate, to investigate on its own into the correctness of information furnished by the candidates in his/her application and/or call for any further information in this regard from the candidate and in the event any or false during such investigation or any subsequent stage, the Eligibility Certificate so granted would be cancelled as withdrawn an action would taken against the candidate as per applicable law. In addition such a candidate should stand debarred from appearing in the Screening Test prescribed in U/S 13(4A) of the Indian Medical Council Act, 1956 and should also not be registered by the State Medical Councils. The decision of the Council in this regard should be final. The eligibility certificate issued to the candidate by the MCI should not entitle him/her to any right, whatsoever, other than to take admission in a graduate medical course in a foreign medical institution/university. In view of the aforesaid, the petitioners were not entitled to be granted the Eligibility Certificate in the

first place in as much as they did not comply with the proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002 and accordingly, their Eligibility Certificates were liable to be withdrawn and/or cancelled. The petitioners ought to have been debarred from appearing in the FMGE-Screening Test for not having complied with Eligibility Requirement Regulations, 2002 as aforesaid, but unfortunately such non compliance could not be detected prior to their participating in the said examination and could only be detected by the National Board of Examinations in Medical Sciences at the stage of distribution of Pass Certificates and was informed to the National Medical Commission vide communication dated 07.06.2024 when the NMC for the first time came to know that an alleged off-shore campus of Lincoln University College, Malaysia was being illegally run at Sanjiban Hospital and College, Howrah, West Bengal without any authority of Law. The Course Completion Certificate issued by Lincoln University College, Malaysia did not mention any off-shore campus of the said institute in India and gave an impression that the entire duration of the 5 year course of Doctor of Medicine (MD) had been conducted in Malaysia itself. But, the no Objection Certificate referred to Sanjiban Hospital Campus, Uluberia, Howrah as a recognised offshore campus of the said University and it had been recorded therein that “The collaboration and accreditation of Sanjiban Hospital Campus was undertaken with due respect to the Law of the Land of both countries.....” The Sanjiban Hospital did not comply with the laws of India for setting up a Medical College. Though Sanjiban Hospital was a party respondent in the present writ petition. Nothing was forthcoming from the

said respondent as to how the said hospital was running a Medical Assessment and Rating Board of the National Medical Commission under Section 28 of the National Medical Commission Act, 2019. The entry slip issued by the National Board of Examinations was Medical Sciences for FMGE December, 2023 Certificate Collection, inter alia, provided for a self declaration by the candidates wherein it had to be categorically declared by the candidates that they had gone through the Eligibility Requirement Regulations, 2002 and their subsequent amendments and in an event it was detected at any stage that the candidate had resorted to use of any unfair practice to seek an eligibility to appear in FMGE, he/she would be liable of an academic and a criminal punishment as may be applicable and decided to be imposed by NBEMS/law enforcing agencies. It was true that Regulation 4(3) of the Screening Test Regulations, 2002 had been struck down by the Hon'ble Division Bench of the Delhi High Court, which had been upheld by the Hon'ble Supreme Court, but it was also true that the Proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002 was still in vogue. In fact, the very judgement of the Hon'ble Delhi High Court which struck down Regulation 4(3) of the Screening Test Regulations, 2002 duly considered and upheld the Proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002. Regulation 4(3) of the Screening Test Regulations, 2002 was stuck down on the ground that the said Regulation ran contrary to the policy discernible from the express language of Section 13(4A) and 13(4B) of the Indian Medical Council Act, 1956. However, such defect was subsequently cured by making the National Medical Commission

(Foreign Medical Graduate Licentiate) Regulations, 2021 in exercise of powers under Section 57 read with sub-section (4) of section 15 of the National Medical Commission Act, 2019. Regulation 2(iii) of Schedule – I of the FMGL 2021, inter alia, provided that “The entire course, training and internship or clerkship shall be done outside India in the same foreign medical institution throughout the course of study and no part of medical training and internship shall be done in India or in any other country other than country from where the primary medical qualification is obtained.” Even though Regulation 4(3) of the Screening Test Regulations, 2002 was no longer in existence and the FMGL 2021 was not applicable to the petitioners, the Proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002 was very much in vogue and the same not having been complied with by the petitioners, they were not entitled to any relief whatsoever in the instant writ petition. In so far as the judgements cited on behalf of the petitioners were concerned, the following submissions were made. As regards (2011) 11 SCC 748 – Medical Council of India Vs. Saai Prasanna & Ors, as this judgement was pre 2013, the Hon’ble Supreme Court in paragraph 14 of the said judgement referred to Regulation 4(3) of the Screening Test Regulations, 2002 while considering the apprehension of the MCI that unscrupulous operators in India might commence and conduct courses in unauthorised institutions in India and make the students take their examination in a foreign country to secure a degree outside India and thereafter flood India with inadequately and improperly educated medical graduates, by appearing and passing in the screening test. Regarding 2013

SCC Online Del 3904 – Rohit Naresh Agarwal Vs. Union of India & Ors, though this judgement struck down Regulation 4(3) of the Screening Test Regulations, 2002 this was not a judgement delivered in a case relating to offshore campus of a Foreign Institution in India. This was a case where the petitioners started their course in one foreign institution. In this judgement, MCI relied upon (2011) 11 SCC 748. Further in this very judgement, the Proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002 was considered and upheld. 2013 SCC Online 3913 – Prashant Kumar Gupta & Ors. Vs. Medical Council of India & Ors, being delivered by an Hon'ble Single Judge of the Hon'ble Delhi High Court was not a binding precedent on this Hon'ble Court. Be that as it may, this judgement did not consider the Proviso to Regulation 9 of the Eligibility Requirement Regulations, 2002. The judgement reflected that the offshore campus was closed down. The judgement also considered (2011) 11 SCC 748 and carved out a distinction between the petitioners in both the cases in paragraph 8 thereof. It was, inter alia, held that the MCI could have withdrawn the Eligibility Certificate which was not done. In the instant case the NMC came to know about the alleged offshore campus much later even after the FMGE was conducted through communication dated 07.06.2024 issued by the NBEMS. (2022) 13 SCC 56 – National Medical Commission Vs. Pooja Thandu Naresh & Ors, was passed taking into consideration the exceptional circumstances due to the Covid 19 Pandemic wherein the Hon'ble Supreme Court issued directions on the concerned authority to frame a scheme as a one time measure in exercise of powers under Article 142 of the Constitution of India.

4. Learned counsels for the other respondents also advanced their submissions.

5. I heard the learned counsels for the parties and perused the writ petitions, the affidavits and the written notes of submissions.

Admitted facts

6. The petitioners pursued a course of Doctor of Medicine (MD) at the Lincoln University College, Malaysia. This was equivalent to the degree of MBBS in the Indian context. On completion of the said course, the petitioners appeared in FMGE, a screening test taken in India for such foreign pass outs to practice medicine in India. Such test for December, 2023 was held on 20.01.2024. Although the petitioners cleared the said FMGE, they were not issued necessary pass certificates by the National Board of Examination in Medical Sciences. Therefore, they are unable to undergo compulsory rotating medical internship.

7. Admittedly, the National Medical Commission (formerly, the Medical Council of India) recognises the degree of MD the University of Malaysia.

8. Furthermore, the concerned University of Malaysia and its laws on medical education recognise the degree of MD given by the concerned Lincoln University College, Malaysia.

9. As the petitioners commenced their course of Doctor of Medicine in the academic session of 2018-19, they would be guided by the legislative scheme of the Medical Council Act, 1956 and not by the National Medical Commission Act, 2019.

10. Out of the entire course done by the petitioners under the Malaysian College only for about two months the petitioners undertook training in Malaysia. For the rest of the period they were imparted education in one Sanjiban Hospital, Uluberia, West Bengal, which was purportedly an offshore campus of the Malaysian University College.

11. As the respondent authorities found out about the petitioners undergoing bulk of their education in an institution in India, they are not issuing pass certificates for the FMGE undertaken by the petitioners.

Applicability of Regulation 5 of the 2021 Regulations

12. This Regulation was not applicable to the petitioners as they had pursued their education in the foreign institution by the time such change took place. Clearly, the petitioners would be guided by the Medical Council Act of 1956 and the Regulations made thereunder.

13. In fact, introduction of Clause 2(iii) in the Schedule I of the Regulations that “the entire course, training and internship or clerkship shall be done outside India in the same foreign medical institution throughout the course of study and no part of medical training and internship shall be done in India or any other country from where the primary medical qualification is obtained” would make it abundantly clear that a lacunae that was possibly there in the existing law was being cured. Had such provision been there prior to 2018-19, the respondents would have had a much better case to argue. Quite obviously, such a substantive provision of law cannot be applied retrospectively.

Regulation 9 of the Eligibility Requirement Regulation, 2002

14. The best point that the National Medical Commission urged was Regulation 9 of the Regulations of 2002. It provided that the entire study of medical course must be at the same institute located abroad for the entire duration of the course from where, he/she had obtained the degree. As would appear from the decision of the Delhi High Court in Rohit Naresh Agarwal (supra), the purpose of the said regulation was to restrict candidates from shifting colleges. Thus, Regulation 9 of the Regulations of 2002 clearly falls short of Regulation 5 of the Regulations of 2021 and does not, in clear terms, take into consideration the issue of an “offshore campus”.

Whether the Indian Medical Council or National Commission can regulate norms to be set by the corresponding Commission/Council in another country to regulate medical education and practice

15. As has been contended on behalf of the petitioners by referring to Aiyar’s Advanced Law Lexicon, an offshore campus means an institute, college centre, school or campus of the University that could be established outside the country.

16. The argument of applicability of Section 10A of the 1956 Act was considered by the Hon’ble Apex Court in Medical Council of India Vs. J. Saai Prasanna and Ors. While rejecting the contention of the Medical Council of India, it was held that medical qualifications granted by medical institution outside India were governed under Section 13(4A) of the 1956 Act. Among other things, it was held that in the case of persons who obtained medical

qualifications in a medical institute outside India, the question was as to where the study was undertaken was not relevant.

17. Once our country recognised the medical qualifications of a foreign University and such medical degree holder passed the screening test in India, the Medical Council of India could not refuse to recognise such degree merely on the ground that the students did a part of the study in offshore campus in India, which was not itself recognised here as a medical College.

18. The view in Saai Prasanna (supra) was followed by the Delhi High Court subsequently in Rohit Naresh Agarwal (supra).

19. The Delhi High Court clearly held that any attempt on the part of the Medical Council of India to regulate the affairs of a foreign university was beyond its power. This principle was reiterated by the Delhi High Court in Prashant Kumar Gupta (supra) Vs. Medical Council of India (supra).

20. The inference that could be drawn from relevant judgements on this issue is that it is open to the Medical Commission of this country to recognise a foreign degree or not. However, once such foreign degree is recognised by the Council or Commission in India and Indian students on the basis of such recognition pursued a course of medical education in such foreign university, it shall not be open to the Council or Commission to go back on their words and refuse to give credence to such degree merely on the ground that for the entire period of the medical course the petitioners were not studying in the said country.

21. Now, it is, thus, not quite important whether the said offshore campus of the Malaysian college namely, Sanjiban Hospital, had conformed to the

norms of National Medical Commission in India to impart medical education. It was for Malaysian authorities to consider such issues.

22. However, with the introduction of Regulation 5 of the Regulations of 2021, it has been made amply clear that for the entire duration of the medical course a student has to pursue his studies in an institution outside the country. Therefore, prospectively it shall be open to the respondent authorities to rely on such regulation.

23. Pooja Thandu's case (supra) is based on distinct facts. Unlike in the instant case, the students attended a part of their course online. Even in the said case the Hon'ble Supreme Court found that the students having finally obtained certificates from a foreign institute were national resources, which should not be wasted affecting the life of young students. They were allowed to move towards medical practice subject to any further training that may be prescribed by the Indian authorities.

Passing FMGE

24. FMGE is considered to be quite a difficult test to clear. As claimed by the petitioners, for the screening test of 2023, out of 61616 candidates appearing for the examination, only 10261 candidates passed, the rate of success being only 16.65%. Therefore, the petitioners have indubitably proved their suitability.

Conclusions

25. In view of the above discussions, the respondent authorities have not been able to make out a case for preventing issuance of pass certificates for FMGE tests that the petitioners had undergone and cleared.

26. Therefore, the respondent authorities, especially the respondents no. 3 and 4 shall issue FMGE pass certificates to the petitioners and the respondent no. 5 shall accommodate the petitioners for the compulsory rotating medical internship positions of affiliated medical colleges and hospitals in West Bengal. The certificates shall be issued to the petitioners within a fortnight from this date and the respondent no. 5 shall do the needful as indicated above at the earliest thereafter.

27. With these observations, the writ petition is disposed of.

28. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)