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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 03.07.2024***Decided on: 12.07.2024***

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W.P.(C) 8616/2024 & CM APPL. 35299-300/2024**DR SUDARSHAN KUMAR ARYA & ORS.Petitioners**Through: Mr. Apoorve Karol and Ms.
Mithu Jain, Advocates.

versus

UNION OF INDIA & ORS.**.....Respondents**Through: Mr. Vikrant N. Goyal and Ms.
Nikita Goyal, Advs for R-1.Mr. T. Singhdev, Ms. Anum
Hussain, Mr. Abhijit
Chakrovarty, Mr. Bhanu
Gulati and Mr. Sourabh
Kumar, Advs. for R-2.Ms. Maninder Acharya, Sr.
Adv. with Mr. Kirtiman Singh,
Mr. Waize Ali Noor, Mr.
Varun Pratap Singh, Ms.
Shreya Garg and Mr. Varun
Rajawat, Advs for R-3.Mr. Satvik Varma, Sr.
Advocate with Mr. Manish
Dhir, Mr. Chirag Dave, Mr.
Ghazal Ghai, Mr. Manas Syal
& Mr. Shantanu Parmar,
Advocates for R-4.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****J U D G M E N T**



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SWARANA KANTA SHARMA, J.

1. The issue before this Court concerns whether the petitioner doctors, who have completed their two-year Diploma courses offered by College of Physicians and Surgeons, Mumbai (*'CPS Mumbai'*), have a right to apply for and appear in the Diplomate of National Board-Post Diploma Centralized Entrance Test 2024 (*'DNB-PDCET Examination 2024'*), conducted by the National Board of Examinations in Medical Sciences (*'NBEMS'*).
2. The petitioners i.e. 13 doctors, who have been awarded



different Diploma qualifications by CPS Mumbai, which they had pursued after completing their Bachelor of Medicine and Bachelor of Surgery (***MBBS***), have preferred the present writ petition praying, *inter alia*, that NBEMS be directed to amend their online portal to allow the petitioners to submit applications for the Examination before the deadline. They further pray that Clause 4.8 of the Information Bulletin published for the DNB-PDCET Examination 2024 be declared as illegal and void, and petitioners be permitted to sit for the Examination which is scheduled for 21.07.2024.

3. The respondents arrayed before this Court are as follows: Union of India through Ministry of Health and Family Welfare (***MoHFW***) as respondent no. 1, National Medical Commission (***NMC***) as respondent no. 2, NBEMS as respondent no. 3, and CPS, Mumbai as respondent no. 4.

THE CONTROVERSY

4. The petitioners herein are all doctors who, after completing their MBBS degrees, had pursued different Diploma courses such as Diploma in Orthopedics (***DORTHO***), Diploma in Ophthalmic Medicine (***DOMS***) and Surgery, and Diploma in Medical Radiology and Electrology (***DMRE***) from CPS Mumbai. Though in the past, the qualifications awarded by CPS Mumbai had been derecognised, the circumstances had changed when 39 Diploma courses offered by it were recognised in the year 2017 i.e. when the petitioners had enrolled themselves in these courses.

5. The petitioners' academic journey faced an unexpected turn in



the year 2018 when 36 of these 39 recognized Diploma courses were again derecognized, including the courses pursued by the petitioners. Despite this setback, a significant development arose a few years later. In response to the grievances of affected students, the MoHFW issued a letter on 18.10.2022 which clarified that the derecognized qualifications would be deemed to be recognized for 466 students who had enrolled in CPS Mumbai's Diploma courses between 17.10.2017 and 12.02.2018. As a matter of record, the petitioners are included in this group of 466 doctors.

6. With the understanding that their Diploma qualifications were now recognized by the MoHFW, the petitioners aimed to apply for the DNB-PDCET Examination 2024. This examination is a ranking test for admission to various Post-Diploma DNB Courses, which are two-year Broad Speciality courses conducted by the NBEMS. However, their hopes were dashed when they reviewed the Information Bulletin for the DNB-PDCET Examination 2024 published by NBEMS. They were particularly taken aback by Clause 4.8, which rendered them ineligible to apply for the examination. For reference, Clause 4.8 of the Information Bulletin, which is being challenged before this Court, is extracted hereunder:

“4.8 Candidates possessing Diploma qualifications awarded by the College of Physicians and Surgeons (CPS), Mumbai other than DPB, DCH and DGO are NOT eligible to apply for DNB-PDCET in line with the clarification received from the Govt of India vide MoHFW letter No C.18018/11/2021-MEP dated 30.04.2021.”

7. It is thus the grievance of the petitioner-doctors that they have



been barred from filling the online application form for the Examination, as the form does not provide any option for the petitioners to select their Diploma courses, and only Diploma in Pathology and Bacteriology (***DPB***), Diploma in Child Health (***DCH***), and Diploma in Gynaecology and Obstetrics (***DGO***) courses offered by CPS Mumbai are available as options for selection.

8. Therefore, the central issue before this Court is whether Clause 4.8, as extracted above, is illegal and arbitrary, and whether the petitioners, whose Diploma qualifications from CPS Mumbai have been recognized, should be permitted to apply for and participate in the DNB-PDCET Examination 2024.

SUBMISSIONS BEFORE THIS COURT

Submissions on behalf of the Petitioners

9. Mr. Apoorve Karol, learned counsel appearing on behalf of the petitioners argues that the provisions of Clause 4.8 of the Information Bulletin for the DNB-PDCET Examination 2024 published by NBEMS, being highly arbitrary, unjust and contrary to the provisions of law, ought to be set aside.

10. It is submitted that the issue in question is no longer *res integra*, and is squarely covered by the judgment of the Hon'ble Division Bench of the High Court of Bombay (Aurangabad Bench) in case of ***Aasawari Kiran Purohit v. Union of India*** 2023 SCC OnLine Bom 2202. In this regard, it is argued that *vide* letter dated 18.10.2022



issued by MoHFW, it was clarified that 466 students who had joined their respective Diploma courses offered by CPS Mumbai between 17.10.2017 and 12.02.2018, their Diploma courses stood recognized. Mr. Karol states that NBEMS had conducted a similar examination in the year 2023 when it had sought to bar doctors, like the petitioner herein, whose names were present in the list of the 466 students, from appearing in the examination for the said academic year. However, some of the doctors had approached the Hon'ble High Court of Bombay and *vide* various orders and final judgment dated 30.06.2022 passed in ***Aasawari Kiran Purohit (supra)***, the Hon'ble High Court had allowed the aforesaid petition and therefore, doctors who were part of the list of 466 students, were allowed to sit in the DNB-PDCET Examination for the academic year 2023. It is argued that the petitioner doctors, being similarly placed, also seek the same relief and further submit that once the order of the Hon'ble High Court of Bombay has become final, the provisions of clause 4.8 of the Information Bulletin issued by the NBEMS are erroneous and illegal in as much as they seek to create a bar on the petitioner-doctors in applying and appearing for the DNB-PDCET Examination 2024. It is submitted that the respondents have complied with the orders passed in the said case and have not assailed the same before the Hon'ble Apex Court, and thus, they are now bound by the said orders/judgments and they cannot re-agitate the same issue before this Court. It is also contended that a similar judgment was also earlier passed by Hon'ble Division Bench of High Court of Bombay in case of ***Anita Kishanrao Videkar v. Union of India 2021 SCC OnLine***



Bom 14023.

11. Mr. Apoorve Karol, thus, argues that in light of the aforesaid facts and circumstances, it is clear that the conduct of the NBEMS in barring the petitioner-doctors from appearing in the Examination is arbitrary, unjust and erroneous.

12. He further draws this Court's attention to the fact that doctors who were pursuing their two-year Diploma course in DCH, DPB, DGO had also approached this Court by way of *Writ Petition (Civil) No. 4252/2021* as they had also been barred from appearing in the DNB-PDCET Examination for the academic year 2021, and this Court *vide* its order dated 09.04.2021 had granted interim relief to the said Doctors and had allowed them to sit in the examination. Thereafter, *vide* judgment dated 04.05.2021 in ***Umang Litoriya v. Union of India 2021 SCC OnLine Del 2487***, this Court had finally disposed of the said writ petition in light of one letter dated 30.04.2021 issued by MoHFW.

13. While distinguishing a judgment dated 01.04.2024 passed by Hon'ble Division Bench of this Court in case of ***Mahesh Prakash Shinde v. Union of India 2024 SCC OnLine Del 2287***, learned counsel for the petitioners submits that the same is not applicable to the facts of present case, and even otherwise, the said decision, disallowing the candidates possessing Fellowship of CPS ('***FCPS***') qualifications awarded by CPS Mumbai to appear in the DNB Examination, has been assailed before the Hon'ble Supreme Court and the matter is listed on 19.07.2024.

14. Therefore, it is prayed that the present petition be allowed and



the petitioners herein be permitted to apply for and appear in the DNB-PDCET Examination 2024.

Submissions on behalf of NBEMS

15. Ms. Maninder Acharya, learned Senior Counsel appearing on behalf of respondent no. 3 i.e. NBEMS submits that NBEMS is fully empowered and competent to lay down the standards to be maintained and the eligibility criteria for the award of the DNB qualifications. It is stated that CPS Mumbai is not recognized as an Indian University under the provisions of the NMC Act, 2019 and the repealed MCI Act, 1956. Furthermore, it is submitted that as per the notification dated 22.01.2018, qualifications awarded by CPS Mumbai are not recognized medical qualifications for teaching purposes.

16. It is further submitted that CPS Mumbai offers two qualifications: the Fellowship of CPS i.e. FCPS and Diplomas by the CPS. To ascertain the equivalence of CPS qualifications with degrees offered by Indian Universities, the NBEMS had communicated with the Central Government/MoHFW and the NMC on 16.09.2020, 25.11.2020, 16.03.2021, and 06.04.2021. It is stated that NBEMS had received communication dated 20.11.2020 from NMC and communication dated 30.04.2021 from MoHFW. It is argued that the letter dated 30.04.2021 issued by MoHFW clarified that only three CPS qualifications—DPB, DGO, and DCH—are equivalent to their corresponding recognized Diploma qualifications.

17. It is contended that insofar as decision passed by this Court in



case of *Umang Litoriya (supra)* is concerned, this Court had permitted candidates having recognized qualifications i.e. DPB, DGO, and DCH, from CPS Mumbai, to appear in the DNB-PDCET 2021. This decision was based on the MoHFW's letter dated 30.04.2021, which had clarified that only these three Diploma qualifications were equivalent to their counterpart Diploma qualifications.

18. It is further submitted that by a letter dated 18.10.2022, MoHFW had clarified that derecognized qualifications would be deemed recognized for the 466 students who enrolled between 17.10.2017 and 12.02.2018. The NBEMS had then issued letters dated 24.03.2023, 25.09.2023, 28.12.2023, and 01.04.2024, regarding the diploma qualifications awarded by CPS Mumbai in 36 courses during 17.10.2017 to 12.02.2018, requesting clarification on equivalence of these qualifications. However, it is submitted that the response of the Central Government is awaited. It is also argued that the letter dated 18.10.2022, relied upon by the petitioners, does not clarify that their diploma qualifications are equivalent to corresponding recognized Diploma qualifications.

19. Ms. Acharya, learned Senior Counsel further states that *vide* judgment dated 01.04.2024, the Hon'ble Division Bench of this Court has dismissed appeal bearing LPA No. 15/2023 in case of *Mahesh Prakash Shinde (supra)*, wherein the candidates holding FCPS qualifications awarded by CPS Mumbai had been disallowed from appearing in the DNB Final Examinations, and they had challenged the decision of a Single-bench of this Court which had



dismissed their petitions. It is stated that the Hon'ble Division Bench has held that recognition and equivalence are distinct concepts and that recognition of a course does not automatically confer equivalence. It is argued that this judgment applies to and covers the issue in the present case also. It is then submitted that Hon'ble Division Bench of High Court of Bombay (Aurangabad Bench) in case of *Aasawari Kiran Purohit (supra)* had not considered the issue of equivalence of Diploma qualifications, which has been noted by the Hon'ble Division Bench of this Court also.

20. It is, thus, submitted that CPS Mumbai is not a recognized Indian University per the NMC Act. Additionally, as per the notification dated 22.01.2018, CPS qualifications are not recognized for teaching purposes. Furthermore, the letter dated 30.04.2021 recognizes only the DPB, DGO, and DCH qualifications as equivalent to corresponding recognized Diploma qualifications.

21. It is further argued that the petitioners have not pursued any course with the NBEMS and they only seek to appear in an entrance examination conducted by the respondent, for a course they are not eligible for, as their qualifications are not equivalent to recognized Diploma qualifications. It is further submitted that any claim based on promissory estoppel or legitimate expectation is misconceived, as the petitioners have not completed any course with NBEMS that would make them eligible for the examination. They have merely applied to take an entrance examination for which they do not meet the eligibility criteria.

22. Therefore, it is prayed on behalf of NBEMS that the present



writ petition be dismissed.

Submissions on behalf of NMC

23. Mr. T. Singhdev, learned counsel appearing on behalf of respondent no. 2 i.e. NMC submits that CPS Mumbai is neither a recognized medical college nor a recognized university and is also not affiliated to any recognized university, and rather, it is a society registered under the Societies Registration Act, 1860 and thus, beyond the rigor of monitoring/supervision of NMC.

24. It is argued that the applications of the petitioners to appear in DNB-PDCET Examination 2024 are not being accepted by NBEMS on account of the fact that the Diploma qualifications possessed by them, from CPS Mumbai, are not qualifications granted by any Indian University which is recognized as per the provisions of the NMC Act, 2019. Further, the MoHFW *vide* its letter dated 30.04.2021 had clarified that only three Diploma qualifications i.e. DPB, DGO and DCH, awarded by CPS Mumbai, are equivalent to their corresponding other recognized Diploma qualifications, and therefore, such candidates possessing these Diploma qualifications were being permitted to appear in the DNB-PDCET Examinations. Therefore, it is argued that the petitioners, who admittedly do not possess any of the aforementioned three Diploma qualifications, in respect of which equivalence had been granted by MoHFW, are ineligible to appear in DNB-PDCET Examination 2024.

25. Mr. Singhdev further argues that the controversy as to whether the Diploma qualifications acquired by the petitioners from CPS



Mumbai are equivalent to Diploma qualifications granted by Indian Universities, which are recognized as per the provisions of the NMC Act, 2019, is no longer *res integra* in view of the judgment dated 01.04.2024 passed by the Hon'ble Division Bench of this Court in case of ***Mahesh Prakash Shinde*** (*supra*) wherein it has been categorically held that the Courts cannot apply their own evaluation criteria and also cannot substitute their own opinion in place of decisions taken by specialists/experts, for maintaining high standards in medical education. It was also held that it would be prudent for the Courts to leave academic matters to the wisdom of the experts who have a deeper understanding of the issues involving academics, and it was further held that there cannot be any legitimate expectation or promissory estoppel in education matters.

26. It is submitted that the MoHFW *vide* letter dated 31.03.2023, while forwarding letter dated 24.03.2023 as received from respondent NBEMS, had requested the NMC to examine the matter in reference with MoHFW's letter dated 18.10.2022, as well as furnish its comments as to whether the Diploma qualifications awarded by CPS Mumbai to candidates admitted in the 36 courses between 17.10.2017 and 12.02.2018, could be considered equivalent to their corresponding other recognized Diploma qualifications. It is stated that NBEMS had sought the aforementioned clarification so as to determine the eligibility of aforementioned candidates to appear in the DNB-PDCET Examination of 2023. In this regard, Mr. T. Singhdev, learned counsel, draws this Court's attention towards a letter dated 13.04.2023, wherein NMC had informed MoHFW that



the matter regarding recognition of Diploma courses of CPS Mumbai as contained in the letter dated 18.10.2022 had been considered by the Postgraduate Medical Education Board (PGMEB) of the NMC in its meeting held on 12.04.2023, which has decided that the courses offered by CPS Mumbai did not fall under the monitoring control of NMC and thus, PGMEB of NMC did not agree to grant equivalence to the Diploma courses of 466 students. It is further stated that the Board has even recommended to the MoHFW that the three Diploma qualifications which had been granted equivalence *vide* letter dated 30.04.2021 should also be withdrawn from next academic session i.e. 2024-25.

27. It is also contended that the reliance placed by the petitioners on the judgments of the Hon'ble High Court of Bombay in cases of *Anita Kishanrao Videkar (supra)* and *Aasawari Kiran Purohit (supra)* is entirely erroneous and misconceived. It is submitted that the letters dated 20.11.2020, 31.03.2021, 10.01.2023 and 13.04.2023 as sent by NMC to the Central Government / NBEMS were not placed on record before the Hon'ble High Court of Bombay in the above-mentioned cases. It is stated that the Hon'ble Division Bench of this Court has passed the judgment in case of *Mahesh Prakash Shinde (supra)* on similar issue, which would apply in the present case also.

28. Therefore, on these grounds, it is prayed that the present petition be dismissed.



Submissions on behalf of CPS Mumbai

29. Mr. Satvik Verma, learned Senior Counsel appearing on behalf of respondent no. 4 i.e. CPS Mumbai states that during the course of some judicial proceedings pending before this Court, MoHFW had issued a letter dated 30.04.2021 wherein it was stated that DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS(Derm.), FCPS (Mid. & Gyn.) and FCPS (Ophth.) are the only recognized courses of CPS Mumbai at present. He states that the aforementioned FCPS qualifications, which are separate and distinct from Diploma courses, awarded by the CPS Mumbai, are recognized medical qualifications and are registrable qualifications for practice, however, the same are not equivalent to either MD or MS courses. It is argued that the Diploma courses can never be equated with MD/MS, and as such, the issue of equivalence has no relevance in the current proceedings, which are concerned with those Diploma courses which were declared as deemed to be recognised, i.e. in respect of those 466 students who had joined CPS Mumbai between 17.10.2017 and 12.02.2018.

30. It is stated that NBEMS had issued its Information Bulletin for conducting DNB-PDCET Examination for the year 2023 wherein Clause 4.8 of the Information Bulletin stated that “*Candidates possessing Diploma qualifications awarded by the College of Physicians and Surgeons (CPS), Mumbai other than DPB, DCH and DGO are NOT eligible to apply for DNB-PDCET in line with the clarification received from the Govt of India vide MoHFW letter No C. 18018/11/2021-MEP dated 30.04.2021*”. It is stated that this



clause of the Information Bulletin was challenged before Hon'ble Division Bench of High Court of Bombay (Aurangabad Bench) in case of ***Aasawari Kiran Purohit*** (*supra*) wherein the petitioners were permitted to appear for DNB-PDCET Examination of 2023, since Diploma qualification was acquired by the petitioners therein, by taking admission with CPS Mumbai in between 17.10.2017 and 12.02.2018, having been declared to be a recognized Diploma course.

31. Mr. Verma, learned Senior Counsel further submits that on 01.04.2024, NBEMS had issued a letter to MoHFW with respect to the aforesaid order passed in case of ***Aasawari Kiran Purohit*** (*supra*) wherein NBEMS has stated that it has not appealed against the said order. However, on 28.05.2024, NBEMS had issued its Information Bulletin for conducting DNB-PDCET Examination 2024, wherein Clause 4.8 again debarred the present petitioners from applying and appearing in the Examination. It is argued that this clause is worded exactly as the one incorporated in 2023 Bulletin, which has been judicially scrutinized by Hon'ble Division Bench of High Court of Bombay, after which, the similarly situated doctors were held as eligible to sit for the Examination.

32. It is argued further that the present case is not related to the issue decided by the Hon'ble Division Bench of this Court in case of ***Mahesh Prakash Shinde*** (*supra*). In order to buttress the same, Mr. Verma submits that in the said case, the petition was filed challenging the letter dated 30.04.2021 issued by MOHFW, and to seek determination on whether it would be applicable to Doctors who were mid-way through their Fellowship courses conducted by CPS



Mumbai, since the said Fellowship courses were considered not to be equivalent to their respective MD/MS counterpart. He states that the present petition has been filed seeking permission to appear in DNB-PDCET Examination 2024 for admission in various Post Diploma courses. He further states that Diploma courses of CPS Mumbai run for a period of two years, whereas the FCPS courses run for a period of three years. It is thus stated that the issue of equivalence is not in question in the present case, as the courses are in no way related to MD/MS courses. Further, *vide* notification dated 18.10.2022, the said courses of the petitioners as on date stand recognized.

33. Therefore, it is prayed on behalf of CPS Mumbai that the petitioners herein, who have been awarded various recognized Diploma qualifications, be allowed to appear in the DNB-PDCET Examination 2024.

34. This Court has **heard** arguments addressed on behalf of the petitioners as well as respondents and has perused the material placed on record.

ANALYSIS & FINDINGS

Recognition and Derecognition of Courses offered by CPS Mumbai

35. In a significant move in the years 2009 and 2010, the Central Government through notifications dated 02.12.2009 and 03.02.2010 had de-recognized the courses offered and qualifications awarded by CPS, Mumbai by deleting them from the First Schedule of the Indian Medical Council Act, 1956 (*'IMC Act, 1956'*). However, in a notable



turnaround, the Central Government *vide* notification dated 17.10.2017 had recognized 39 Diploma Courses (at post-MBBS level) conducted by CPS, Mumbai, thereby including them once again in the First Schedule of the IMC Act, 1956.

36. The petitioners herein had enrolled in three of these recognized Diploma courses i.e. DORTHO, DOMS and DMRE, during the period when the 39 Diploma courses offered by CPS Mumbai had regained recognition, i.e. in the year 2017.

37. However, subsequently, by way of another notification dated 22.01.2018, the Central Government had again de-recognized 36 out of 39 Diploma courses offered by CPS, Mumbai. Concurrently, 06 FCPS courses were inserted in the First Schedule of the IMC Act, 1956.

38. Notably, both the aforesaid notifications clarified that the qualifications awarded by CPS Mumbai shall not be regarded as recognized medical qualifications for the purpose of teaching.

Grant of Equivalence to Three Diploma Qualifications awarded by CPS Mumbai

39. The MoHFW, by way of letter dated 30.04.2021 addressed to the NBEMS, had then provided crucial clarifications regarding the status of certain courses offered by CPS Mumbai.

40. The letter specified that three Diploma courses i.e. DPB, DGO, DCH, along with one course namely MCPS and six FCPS courses, were the only recognized courses offered by CPS, Mumbai. More importantly, it was clarified that **only these three Diploma**



qualifications i.e. DPB, DGO, DCH were equivalent to their corresponding other recognized Diploma qualifications. This letter, which is germane to the adjudication of dispute in question, is extracted as under:

“To
The Executive Director
National Board of Examinations
Medical Enclave, Ansari Nagar,
Ring Road, New Delhi-110029.

Subject: **Equivalence** of CPS qualifications to MD/MS/PG Diploma qualifications-reg

Sir,

I am directed to refer to letters No. NBE/EDO/2020/429 dated 16:092020 and No. NBE/EDX/2021/2012 dated 06.04.2021 on the subject mentioned above and to say that the matter of equivalence of CPS qualifications to MD/MS/PG Diploma qualifications has been examined in the Ministry and the following is hereby conveyed

1. The **DPB, DGO, DCH, MCPS, FCTS (Med.), FCPS (Path), FCPS (Surg), FCPS (Dem), FCPS (Mid. & Gyn) and FCPS (Oph.) are the only recognized CPS courses at present.**

2. The aforementioned FCPS qualifications awarded by the CPS, Mumbai are recognized medical qualifications for the purposes of the erstwhile Indian Medical Council Act, 1956 and also for the purposes of the National Medical Commission Act, 2019. **These qualifications are registrable qualification for practice, however, the same are not equivalent to either MD or MS courses.**

3. The **Diploma qualifications DPB, DGO and DCH awarded by the CPS, Mumbai are equivalent to their corresponding other recognized Diploma qualifications”**

(emphasis supplied)



Grant of Recognition to Courses Pursued by the Petitioners

41. Thereafter, the Central Government *vide* its letter dated 18.10.2022 had clarified that Diploma qualifications awarded by CPS Mumbai to the 466 students, who had joined their courses between the period 17.10.2017 and 12.02.2018, stood recognised. The relevant portion of this letter reads as under:

“To
The Secretary
National Medical Commission,
Pocket-14, Sector-8, Dwarka,
New Delhi-110077,

Sub: Clarifications regarding **recognition of diploma courses** offered by CPS, Mumbai reg.

Sir/Madam,

1. I am directed to refer to this Ministry's Notifications of even number dated 17.10.2017 and 22.01.2018 (published on 12.02.2018), whereby Ministry first added and then deleted 36 postgraduate degree/diploma qualifications of College of Physicians and Surgeons, Bombay from the First & Third Schedule of Indian Medical Council Act, 1956.

2. In this regard, it is stated that this Ministry is in receipt of a representation from a student who took admission in one of those 36 courses after Ministry's Notification dated 17.10.2017 and now **facing problem in getting her PG qualification registered.**

3. The matter has been examined in the Ministry and it has been found that there are total 466 students (List enclosed), who are facing problems in this issue. Therefore, keeping in minds the future of the students, it is decided and **clarified that these qualifications stand recognized for those students who had taken admission between 17.10.2017 and 12.02.2018** (both date inclusive).

4. You are, therefore, requested to give this a wide publicity so that the students concerned could get benefit of the decision of the Govt. of India.”



(Emphasis supplied)

42. It is the case of the present petitioners that their names were included in the list of the 466 Doctors enclosed with the letter dated 18.10.2022 issued by the MoHFW, and that the said list stands uploaded by respondent no. 2 i.e. NMC on its website. Thus, the petitioners assert that their Diploma courses stand ‘recognized’ as on date.

Publication of Information Bulletin for the DNB-PDCET Examination 2024: Impugned Clause 4.8

43. On 28.05.2024, respondent no. 3 i.e. NBEMS had issued its Information Bulletin for the DNB-PDCET Examination for the academic year 2024. According to this bulletin, the last date to fill out the online application is 17.06.2024, with admit cards to be issued after scrutiny on 16.07.2024, and the examination is to be conducted on 21.07.2024. Notably, clause 4.8 of the Information Bulletin states as follows:

“4.8 Candidates possessing Diploma qualifications awarded by the College of Physicians and Surgeons (CPS), Mumbai other than DPB, DCH and DGO are NOT eligible to apply for DNB-PDCET in line with the clarification received from the Govt of India vide MoHFW letter No C.18018/11/2021-MEP dated 30.04.2021.”

44. It is the **grievance** of the petitioners-doctors that this clause effectively bars them from filling out the online application form, as it does not allow them to select their respective diploma courses. Only DBP, DCH, and DGO Diploma courses offered by CPS,



Mumbai are available as options. Thus, the petitioners submit that they have been left with no choice but to turn to this Court for justice, since despite their Diploma courses being recognized, they have been disallowed by NBEMS to appear for the DNB-PDCET Examination 2024.

Recognition of Qualifications vs. Equivalence of Qualifications

45. **In this Court's opinion**, there is no dispute insofar as the recognition of the Diploma courses pursued by the petitioners i.e. DORTHO, DOMS and DMRE from CPS Mumbai, is concerned.

46. It is true that after these courses were recognized in the year 2017, and again de-recognised in the year 2018; however, the issue pertaining to the recognition of these courses stands clarified by the Central Government *vide* letter dated 18.10.2022 in which it has been categorically mentioned that those students who had taken admission in these courses, in the period when they stood recognized i.e. between 17.10.2017 and 12.02.2018, shall be deemed to have pursued recognized Diploma courses offered by CPS, Mumbai.

47. Thus, the **core controversy** in the present case **does not concern the recognition** of these Diploma courses, **but centers on** whether the Diploma qualifications awarded to the petitioners are equivalent to other recognized Diploma qualifications, so as to make them eligible to appear for DNB-PDCET Examination 2024.

48. The idea of 'equivalence' of qualifications was explained by the Hon'ble Apex Court in the case of *Mukul Kumar Tyagi v. State of U.P.* (2020) 4 SCC 86 by way of following observations:



“65. We have already held that equivalence of qualification cannot be left to candidates by their self-declaration. There have to be norms and guidelines, which may subserve the purpose and object of making equivalent qualification as an eligibility for the post. The word “equivalent” has been defined in *Advanced Law Lexicon* by P. Ramanatha Aiyar, 3rd Edn. in the following manner:

“Equivalent. Equal in worth or value.

Equal in value, measure, force, effect, etc.

EQUIVALENT, EQUAL. Equal expresses the fact that two things agree in anything which is capable of degree, e.g., in quantity, quality, value, bulk, number, proportion, rate, rank and the like. Equivalent is equal in such properties as affect ourselves or the use which we make of things, such as value, force, power, effect impact and the like (as) “Equivalent of money”.”

66. When issue is of the equivalence of a qualification, which is mandatory qualification for a post, there should be yardsticks declaring equivalent or equivalence, which has to be declared by any body entrusted with such jurisdiction and who is competent to declare equivalence of a qualification. In absence of any such declaration, it is for the employer to provide for the methodology for determining the equivalent qualification.....”

49. Furthermore, a three-judge Bench of Hon’ble Apex Court in case of *Unnikrishnan CV v. Union of India* 2023 SCC OnLine SC 343 has held that equivalence is a technical academic matter and the same cannot be implied or assumed, as reflected in the following observations:

“14. In *Guru Nanak Dev University v. Sanjay Kumar Katwal* this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to



the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

15. In *Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad*, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. **Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification.** Equivalence of qualification is a matter for the State, as recruiting authority, to determine.

(Emphasis supplied)

16. The **diploma courses** offered by College of Military Engineering, Pune, (CME) **has been recognized as a course** for recruitment to the post under the Central Government vide notification dated 01.02.2001, issued by Ministry of Human Resource Development (Annexure P-8). **Said notification does not indicate diploma courses specified therein which are recognized by the Government of India are to be treated as equivalent.** No material has been placed on record by the appellants to demonstrate that Diploma in DED is equivalent to Diploma in Civil Engineering.”

(Emphasis supplied)

50. The Hon’ble Division Bench of this Court in case of *Mahesh Prakash Shinde (supra)* has held that Courts cannot adjudicate on the aspect of equivalence in the absence of any notification issued by the competent authority granting the status of an equivalent medical qualification. The observations, relevant for deciding the present petitions, are extracted hereunder:



“32. It is **significant to point out that merely because courses conducted by CPS, Mumbai, have been granted recognition would not mean that they have also been granted equivalence to MD/MS degree. “Equivalence” is a term which describes the state of being equal and requires scrutiny to decipher whether two things are, in fact, equal in force and value.** Navigating the complexities of equivalence often requires the involvement of credential evaluation by the expert bodies.....

33. This Court is of the considered view that even otherwise, **the issue pertaining to equivalence is to be decided by the competent authority, having expertise in academic matters. This Court cannot adjudicate on the aspect of equivalence in the absence of any notification issued by the competent authority granting the status of an equivalent medical qualification.....**

34. Further, in the case of *Godrej and Boyce Mfg. Co. Ltd. Versus State of Maharashtra and Others*, Supreme Court has noted that “Equivalent” has been defined to be equal in value, amount, function, meaning having the same or similar effect or significant corresponding in position or function.”

(Emphasis supplied)

Whether Diploma Qualifications awarded to the Petitioners are Equivalent to their corresponding Diploma Qualifications?

51. To settle the controversy emerging in the present case, it will now be crucial to carefully peruse and examine the various letters, communications and notifications issued by the respondents from time to time.

52. Letters dated 30.04.2021 and 18.10.2022, both issued by the Central Government, have already been extracted in the preceding paragraphs. **A bare perusal of these letters, when read together, makes the following facts clear:**

(i) Firstly, the only recognized courses being offered by CPS



Mumbai, *as on date*, are DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS (Derm.), FCPS (Mid. & Gyn.) and FCPS (Oph.).

- (ii) Secondly, only the Diploma qualifications i.e. DPB, DGO and DCH - awarded by the CPS, Mumbai are equivalent to their corresponding other recognized Diploma qualifications, *as on date*.
- (iii) Thirdly, different Diploma courses offered by CPS Mumbai, in which 466 students took admission including the petitioners herein, between the period 17.10.2017 and 12.02.2018, stand recognized *vide* letter dated 18.10.2022.
- (iv) Fourthly, the letter dated 18.10.2022 mentions that the decision regarding recognition of Diploma qualifications was taken since the students were facing problems in getting their 'PG qualification registered'.
- (v) Fifthly, the subject of letter dated 18.10.2022 mentions only 'recognition' whereas the subject of letter dated 30.04.2021 mentions 'equivalence'.

53. This Court's attention has also been drawn towards a letter dated 24.03.2023, written by NBEMS to the MoHFW, wherein NBEMS had sought clarification as to whether diploma qualifications awarded by CPS Mumbai, with respect to the students admitted to those 36 courses which have been recognised only for the period 2017-18 *vide* letter dated 18.10.2022, should be considered equivalent to their corresponding other recognised diploma qualifications. It was also mentioned that this clarification was



required to determine eligibility of these candidates for DNB-PDCET Examination. The relevant portion of this letter reads as under:

“...Subject: Clarification regarding recognition of diploma courses offered by CPS, Mumbai

Sir,

This is with reference to regarding above captioned subject matter.

I would to bring your kind attention to MoHFW letter dated 30.04.2021 whereby it was clarified that the DPB, DGO, OCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg), FCPS (Dern), FCPS (Mid. & Gyn.) and FCPS (Oph.) are the only recognized CPS courses at present and the Diploma qualifications DPB, DGO and DCH awarded by the CPS, Mumbai are equivalent to their corresponding other recognized Diploma qualifications.

Please be apprised that pursuant to the aforementioned clarification, candidates who have done DCH, DPB and DGO from CPS, Mumbai were allowed to appear in DNB-PDCET, conducted by NBEMS for admissions to Post Diploma DNB courses. Candidates with diploma qualifications from CPS, Mumbai in any specially other than these three are not eligible for DNB-PDCET.

Now, representations are received from few candidates citing reference of a letter dated 18.10.2022 issued by MoHFW whereby diploma qualifications of candidates who have taken admissions in one of the 36 CPS diploma courses (which were derecognized vide notification dated 12.02.2018) during 17.10.2017 to 12.02.2018 (both dates inclusive) have been considered as recognized.

In view of the above, it is **requested to kindly clarify whether the diploma qualifications awarded by the CPS, Mumbai w.r.t. the students admitted to such 36 courses during 17.10.2017 to 12.02.2018 (both dates inclusive) shall be considered equivalent to their corresponding other recognized Diploma qualifications also.** The clarification would allow NBEMS to determine eligibility of these candidates for DNB-PDCET 2023 for which applications are currently being invited.

An early clarification shall be highly appreciated as the last



date for application submission for DNB-PDCET 2023 is 30.03.2023. The DNB-PDCET 2023 is scheduled to be held on 23rd April 2023.”

(Emphasis supplied)

54. Thereafter, another letter dated 31.03.2023 was addressed to the NMC by the MoHFW wherein the same clarification was sought from NMC. The relevant portion of this letter is extracted hereunder:

“To
The Secretary,
National Medical Commission,
Pocket-14, Sector-8, Dwarka
Delhi-110077

Sub: Clarification regarding recognition of diploma courses offered by CPS, Mumbai- reg.

Madam/Sir,

1. I am directed to forward herewith a copy of letter No. NBEMS/EDO/2023/3504 dated 24.03.2023 received from National Board of Examinations (NBE) alongwith the various representations received from Doctors and Association of students of CPS Mumbai (on behalf of 466 students of CPS Mumbai), requesting therein to clarify whether diploma qualifications awarded by CPS, Mumbai w.r.t students admitted to 36 courses during 17.10.2017 to 12.02.2018 (both dates inclusive) shall be considered equivalent to their corresponding other recognized Diploma qualifications.

2. You are, therefore, requested to examine the matter and furnish your comments to the Ministry urgently by RETURN Email.”

55. Pursuant to receipt of this letter, the NMC had addressed one letter dated 13.04.2023 to the MoHFW wherein it was informed that the Post-Graduate Medical Education Board of NMC had conducted a meeting on 12.04.2023 and had decided that the courses run by



CPS, Mumbai **do not come under the monitoring control of NMC and therefore, it did not agree to providing equivalence to 466 courses** recognised by the Central Government *vide* letter dated 18.10.2022. The contents of this letter are as follows:

“To
Shri Sunil Kumar Gupta,
Under Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi-110077

Subject: **Clarification regarding recognition of Diploma courses offered by the CPS, Mumbai-reg.**

Sir,

1. Please refer to your letter no. V-11025/14/2015-MEP [FTS:307429] dated 31.03.2023. It is informed that the matter was discussed in the Post Graduate Medical Education Board Meeting held on 12.04.2023 wherein **it was decided that the courses run by CPS, Mumbai does not come under the monitoring control of the National Medical Commission. Therefore, PGMEB does not agree for providing equivalence to courses of 466 students recognized by the MoHFW vide its letter dated 18.10.2022.**

2. Further, PGMEB also recommends that the 3 Diploma courses (DPB, DCH and DGO) for which equivalence has been given vide MoHFW vide letter dated 30.04.2021 should also be withdrawn from next academic year.

3. This issues with the approval of Competent Authority.”

(Emphasis supplied)

56. With this clarification issued by NMC, to the Central Government/MoHFW, and there being no other communication or notification contrary to the aforesaid by the Central Government or NMC, **it becomes clear, at this stage, that the courses which have been pursued by the petitioners herein i.e. DORTHO, DOMS and**



DMRE and the subsequent Diploma qualifications awarded to them by CPS, Mumbai are not equivalent to their corresponding other recognised Diploma qualifications.

Examining the Cited Judicial Precedents

57. During the course of arguments, learned counsel appearing on behalf of the petitioners had drawn this Court's attention towards the order passed by Coordinate Bench of this Court in case of ***Umang Litoriya (supra)***, to argue that this Court had previously allowed doctors, who had obtained diploma qualifications from CPS Mumbai, to appear in DNB-PDCET Examination 2021 conducted by NBEMS.

58. This Court, having gone through the judgment passed in case of ***Umang Litoriya (supra)***, is of the opinion that the decision in the said case can be of no help to the present petitioners. It is important to note that at the point of time, the interim order was passed in case of ***Umang Litoriya (supra)*** allowing the petitioners therein to appear for the examination as there was no clarity with respect to equivalence of diploma qualification, awarded to the petitioners therein, with other corresponding recognized diploma qualifications. However, during the pendency of the said petition, the MoHFW had issued letter dated 30.04.2021, clarifying that only three diploma qualifications i.e. DPB, DGO and DCH, as awarded by CPS Mumbai, were equivalent to their corresponding other recognised Diploma qualifications, and therefore, the Coordinate Bench by way of judgment dated 04.05.2021 had *only* allowed those petitioners, who possessed DPB, DGO and DCH qualifications to appear for DNB-



PDCET Examination 2021. **The petitioners herein, admittedly, do not possess these three Diploma qualifications.**

59. At this juncture, it will also be important to take note of another decision of this Court in case of *Rashi Satyanarayan Soni v. Union of India* 2022 SCC OnLine Del 3343 wherein the petitioners, who were pursuing or had completed FCPS courses offered by CPS Mumbai, had impugned the letter dated 30.04.2021 issued by MoHFW wherein it had been clarified that FCPS qualifications were not equivalent to MD/MS degrees, which had rendered those petitioners ineligible for DNB and NEET-SS Examinations. While dismissing the petitions, the Coordinate bench of this Court held that since FCPS courses offered by CPS Mumbai were not equivalent to other MD/MS degrees, the petitioners therein could not be permitted to appear for the examinations such as DNB and NEET-SS.

60. The petitioners, in case of *Rashi Satyanarayan Soni (supra)*, had assailed these findings of Coordinate Bench by way of filing Letters Patent Appeal before the Hon'ble Division Bench of this Court. By virtue of judgment dated 01.04.2024, passed in case of *Mahesh Prakash Shinde (supra)*, their appeals have been dismissed and the order of the Coordinate bench has been upheld. The Hon'ble Division Bench has categorically observed that the fact that FCPS qualifications are recognised as per IMC Act, 1956 would not help the case of petitioners to claim equivalence to MD/MS degrees, and no presumptions can be made by Courts in education matters. It was also held that though the petitioners were qualified doctors, who had completed their MBBS and thereafter obtained recognised FCPS



qualifications from CPS Mumbai, yet on this ground, they could not claim any right to appear in DNB examination, in light of a categorical assertion by the respondents that in absence of equivalence of their FCPS qualification with their counterpart in India, they cannot appear in the said examination. The observations of Hon'ble Division Bench, relevant for deciding the present controversy, are extracted as under:

“35. The fact that FCPS qualifications are recognized as per Schedule 1 of the Indian Medical Council Act, 1956, will also not help the case of the appellants to claim equivalence to MD/MS degree. No presumptions can be made by Court in education matters. In the absence of any specific Rule/Regulation/Policy Decision regarding the FCPS qualifications as being equivalent to MD/MS degree, this Court cannot proceed on the basis of any presumption, merely on the basis of the some past practice wherein doctors with FCPS qualifications had been allowed to take the DNB examination.

36. There is no denying the fact that the appellants are qualified doctors, who have successfully completed the MBBS course. **There is also no denying the fact that FCPS qualifications of the appellants are recognized. However, on that basis, the appellants cannot raise any claim for taking the DNB examination, when there is a categorical assertion by the respondents that the appellants are not entitled to take the DNB examination, as they do not possess the requisite qualification of MD/MS for taking up the DNB examination. The appellants have not been able to point out any Rules or Regulations to show that the FCPS qualifications held by them are equivalent to MD/MS qualification, in order to entitle them to take the DNB examination.**

37. The judgments relied upon by the appellants-doctors do not, in any manner, aid or assist their cases, as the same are clearly distinguishable in law and facts.

* * *

37.2 The judgment in the case of *Anita Kishan Rao Videkar (supra)* of Bombay High Court dealt with a case wherein



eligibility criterion was changed midway, which is not the case in the present appeals.

* * *

37.4 Likewise, the judgment in the case of *Aasawari Kiran Purohit (supra)* of Bombay High Court and *Geetanjali Medical College and Hospital (supra)* of Rajasthan High Court, did not deal with the issue of equivalence, which is the subject matter of adjudication in the present appeals.

* * *

38. Considering the aforesaid detailed discussion, it is manifest that the notification dated 22nd January, 2018 issued by respondent no. 1/MoFHW recognizing the FCPS courses never indicated that the same were equivalent to MD/MS qualification. Therefore, **in the absence of any specific notification in this regard, there cannot be any presumption regarding equivalence of FCPS courses with MD/MS qualification.**

39. This Court notes that for the DNB course, possessing MD/MS qualification is a pre-requisite. Hence, in the absence of the appellants possessing MD/MS qualification, they cannot be allowed to sit for the DNB examination on the basis of FCPS qualification, which is not equivalent to MD/MS qualification.”

(Emphasis supplied)

61. During the course of arguments in the present case, the petitioners as well as respondents had referred to the aforesaid decision. Respondent nos. 2 and 3 argued that the ratio laid down in case of *Mahesh Prakash Shinde (supra)* squarely applies to the present case, since the controversy in the present case also relates to absence of equivalence of the Diploma qualifications awarded to the present petitioners by CPS Mumbai, which render them ineligible to appear in the examination in question. The petitioners, and respondent no. 4 i.e. CPS Mumbai, sought to distinguish the said decision on the ground that the Hon’ble Division Bench of this Court



was only concerned with FCPS courses, which are 3 year fellowship courses, whereas the present petitions are related to Diploma courses, which are run for period of 2 years, and that there is no issue of equivalence in the present case and in respect of Diploma qualifications. In this regard, they had also relied upon the decision of Hon'ble Division Bench of High Court of Bombay (Aurangabad Bench) in case of *Aasawari Kiran Purohit (supra)* wherein the similarly placed doctors, who were the petitioners therein, had been allowed to appear in the DNB examination on the ground that since their courses had been recognised *vide* letter dated 18.10.2022 by the Central Government, they could not be stopped from appearing in the examination. Respondent nos. 2 and 3, however, have argued that the Hon'ble Division Bench of High Court of Bombay had not considered the issue of equivalence of diploma qualifications and the relevant letters and communications issued by the respondents were not placed before the Court, whereas the issue of equivalence, which is seminal in the present case, has been considered, examined and adjudicated upon by the Hon'ble Division Bench of this Court in judgment dated 01.04.2024 in case of *Mahesh Prakash Shinde (supra)*.

62. **In this Court's opinion**, the argument of petitioner and respondent no. 4, that the decision in case of *Mahesh Prakash Shinde (supra)* is not identical and not applicable in the facts of present case is misplaced, since the Hon'ble Division Bench of this Court was also seized of a matter wherein the petitioners, whose courses and qualifications awarded to them were recognised but not



declared equivalent to their counterparts, had been rendered ineligible to appear in the examination conducted by NBEMS. The only difference between the present case and the aforesaid case is, that the petitioners therein had pursued FCPS courses whereas the petitioners herein have pursued Diploma courses; however, in both the cases, the issue pertains to whether recognition of these courses would entitle the petitioners to appear in Examination, in absence of subsequent declaration of those qualifications being equivalent to their corresponding qualifications in India. The arguments of petitioners and respondent no. 4 are also misplaced since in the letter dated 30.04.2021, the Central Government had specifically clarified that only three Diploma qualifications were equivalent to their corresponding diploma qualifications, meaning thereby, that the other diploma qualifications, such as those awarded to the present petitioners, have been not been declared as equivalent to their corresponding diploma qualifications. Moreover, the Coordinate bench of this Court in case of *Umang Litoriya (supra)* had also allowed only those petitioners who had been awarded DPB, DGO and DCH qualifications by CPS Mumbai to appear in the Examination since only these three diploma qualifications were declared to be equivalent to the corresponding diploma qualifications.

63. It is further relevant to consider that the Hon'ble Division Bench of this Court in case of *Mahesh Prakash Shinde (supra)* has already held that the issue of equivalence was not dealt with by decision of Hon'ble Division Bench of High Court of Bombay (Aurangabad Bench) in case of *Aasawari Kiran Purohit (supra)*.



Therefore, in the facts and circumstances of the present case, **this Court is of the considered opinion** that the present case and the controversy herein, *to a large extent*, would be governed by the *ratio* laid down by Hon'ble Division Bench of this Court in case of ***Mahesh Prakash Shinde*** (*supra*).

Conclusion

64. In light of the above discussions, **this Court concludes** that while the recognition of the Diploma courses pursued by the petitioners is undisputed, the pivotal issue at hand is the equivalence of these qualifications to other recognized diplomas. The MoHFW's letter dated 18.10.2022 clarifies that the diploma courses pursued by the petitioners are recognized. However, this recognition alone does not automatically grant equivalence, as elucidated by the Hon'ble Supreme Court in cases of ***Mukul Kumar Tyagi*** (*supra*) and reaffirmed in ***Unnikrishnan CV*** (*supra*). The Hon'ble Division Bench of this Court in ***Mahesh Prakash Shinde*** (*supra*) has also clearly articulated that recognition and equivalence are distinct concepts, and equivalence cannot be presumed without a clear notification from the competent authority.

65. Thus, from the foregoing discussion, it can be concluded that while the petitioner-doctors possess Diploma qualifications awarded by CPS Mumbai, which have been 'recognized' by MoHFW *vide* letter dated 18.10.2022, yet there has been no declaration of their Diploma qualifications as 'equivalent' to their corresponding Diploma qualifications in India.



66. Consequently, the decision of respondent no. 3 i.e. NBEMS, to render the petitioners and similarly placed doctors ineligible to apply for and appear in the DNB-PDCET Examination 2024 scheduled for 21.07.2024, by virtue of Clause 4.8 of the Information Bulletin published by it, cannot be found fault with.

67. In light of the above, the present petition, along with any pending applications, is hereby dismissed.

68. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 12, 2024/at