



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6285 OF 2024

(Vaidehi D/o Ramesh Varhade vs. Union of India and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of the directions
and Registrar's orders.*

Court's or Judge's order

Mr. V.A.Kothale, Advocate for the petitioner.
Mr. P.V.Navlani, Advocate for respondent No.1 & 4.
Mr. R.M.Bhangde, Advocate for respondent No.2.
Mr. V.P.Panpalia, Advocate for respondent No.3.

CORAM : AVINASH G. GHAROTE AND
ABHAY J. MANTRI, JJ.

DATE : APRIL 02, 2025

1) Heard Mr.Kothale, learned counsel for petitioner, Mr.Navlani, learned counsel for respondent Nos.1 and 4, Mr.Bhangde, learned counsel for respondent No.2, Mr.Panpalia, learned counsel for respondent No.3.

2) The petition seeks to quash and set aside the decision of respondent No.3 rejecting the application of the petitioner for permanent registration, as a medical practitioner. The facts in brief giving rise to the present petition are as under :-

The petitioner has passed her Bachelor of Medicine and Bachelor of Surgery degree exam from Anhui Medical University, China in respect of which, degree Certificate was issued to her on 25/06/2019. The petitioner thereafter, completed her internship of one year from the same University (page 19).

3) The Petitioner is an Indian citizen and therefore, appeared in the screening test for Foreign Medical Graduate Examination in the December, 2023 Session, which she is said to

have cleared, finally after having being unsuccessful in earlier seven attempts, in respect of which a certificate in that regard came to be issued to her on 23/02/2024 (page 20). The petitioner, however, claim to be governed by the screening test resolution 2002 which were published in the Official Gazette on 18/02/2002 by the Medical Council of India which regulated the grant of registration to Indian citizens who had secured a medical degree from a foreign University, in terms whereof vide regulation 10 as amended on 28/06/2003 a candidate was required to pass all the three papers as indicated therein in the same attempt, however, there was no restriction on the number of attempts to appear in the test (page 67). As indicated above, the petitioner had appeared in as many as eight attempts, in the screening test and ultimately has cleared the same in December, 2023.

4) The National Medical Commission thereafter notified the National Medical Commission (Foreign Medical Graduate Licentiate) Regulations, 2021, for granting registration to an Indian citizen who had taken a medical degree from a foreign country to enable such citizen to have a right to practice in the country. The petitioner in terms thereof, applied for registration and is presently claimed to be undergoing the internship with Dr.Rajendre Gode Medical College, Amravati, which is to end on 03/06/2025.

5) The grievance of the petitioner, is that in terms of Clause 5 of the NMC Regulations, 2021 they are not applicable to foreign medical graduates who have acquired a foreign medical degree or primary qualification, as the case may be, prior to the coming into force of the said Regulations on account of which the petitioner is not liable to complete her internship under these

Regulations, but would be entitled to registration and its benefit forthwith on account of her having passed the screening test in December, 2023 under the Regulations, 2002. It is therefore, contended by Mr.Kothale, learned counsel for the petitioner that the petitioner having complied with the requirements of the MCI Regulations, 2002 registration ought to have been granted immediately to the petitioner and the impugned communication dated 30/04/2024 (page 27) needs to be quashed and set aside and accordingly directions need to be given to the respondents to award her registration.

6) Mr.Bhangde, learned counsel for respondent No.2 as well as, Mr.Navlani, learned counsel for respondent Nos.1 and 4 and Mr.Panalia, learned counsel for respondent No.3 do not dispute that the Regulations of 2021, are not applicable to the petitioner, it is however, their contention that considering the gap between the date of acquisition of the qualification by the petitioner and the internship, which she is presently going on, it would be in the interest of the petitioner and also the patients which she would be attending to complete the internship.

7) A perusal of the NMC Regulation, 2021, (page 39) clause 5 thereof, would indicate that it is not applicable to the petitioner who has acquired a foreign medical degree from the Anhui Medical University China. It is however, material to note that in spite of having acquired the degree of Bachelor of Medicine and Bachelor of Surgery in June, 2019 after having undergone an internship in the same University from 01/07/2018 to 30/06/2019, the petitioner has been unable to clear the FMGE examination, in as many as in seven attempts. It is only in the eight attempt given in December, 2023, that the petitioner has

been able to clear it. This would clearly indicate that the proficiency which the petitioner has in the subject.

8) Though it is true that under the Regulation, 2002 the petitioner having cleared the FMGE examination in December 2023, on the eight attempt would be entitled to registration, however, we find that the larger public interest, would be adversely affected, if the petitioner, does not complete her ongoing internship. This is so for the reason that the petitioner has lost touch with the subject of surgery which she would be practising upon registration being granted. The subject is not one which can be said to be assimilated by Book Education, but is one which requires on hand experience, which can only be available to the petitioner once she completes the internship, which she is presently under going. Otherwise, it would be tantamount to releasing a butcher with a knife amongst a flock of sheep. It cannot be disputed, by any one that the subject of surgery would require on hands training which is must for a person professing to practice the subject on his/her patient.

9) We are aware, that though right has accrued in favour of the petitioner for getting registration, however, it is equally a settled position of law that the exercise of discretion under Article 226 of the Constitution is to be based not upon an individual private right, but in public large interest, where the situation demands. This position has clearly been elucidated by the Hon'ble Apex Court in ***M.S.Sanjay vs Indian Bank and others*** in Civil Appeal No. 1188/2025 decided on 29/01/2025 in the following words.

"9. It is well settled that interference by the Writ Court for mere infraction of any statutory provision or norms, if such infraction has not resulted in injustice is not a matter of course. In the case of

Shiv Shanker Dal Mills v. State of Haryana reported in (1980) 2 SCC 437, the dealers in that case had paid market fees at the increased rate of 3%, which was raised from the original 2 per cent under Haryana Act 22 of 1977. The excess of 1 per cent over the original rate was declared ultra vires by this Court in the case of *Kewal Krishna Puri v. State of Punjab* reported in (1980) 1 SCC 416. The excess of 1 per cent over the original rate having been declared ultra vires, became refundable to the respective dealers from whom they were recovered by the Market Committee concerned. The demand for refund of the excess amounts illegally recovered from them not having been complied with, the dealers filed Writ Petitions under Article 32 and Article 226 of the Constitution for a direction to that effect to the Market Committee concerned. The Market Committees contended that although the refund of the excess collections might be legally due to the dealers, many of them had in turn recovered this excess percentage from the next purchasers. While disposing of the petition and laying down guidelines, this Court held as under :

“Article 226 grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest.”

10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties.”

10) In the instant case also considering the time lag between the date of acquisition of the qualification by the

petitioner and the present date, and the fact she required as many as eight attempt to clear FMGE examination, we deem it prudent not to grant the relief in favour of the petitioner of directing her registration and deem it appropriate for the petitioner to complete her internship which in any case is to come to an end on 03/06/2025 after which she is bound to get registration.

11) For the foregoing reasons, we do not deem this an appropriate and fit case to exercise our extraordinary jurisdiction and discretion in larger public interest, in favour of the petitioner. The petition is therefore, dismissed. Considering the circumstances, no order as to costs.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)