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

+ LPA 554/2023 & CM APPL. 35614/2023

SACHIN KUMAR

..... Appellant
Through: Ms. Yoothica Pallavi, Advocate.

versus

NATIONAL MEDICAL COMMISSION & ORS.

..... Respondent
Through: Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Advocates.
Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor and Mr. Madhav
Bajaj, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
17.07.2023

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1. The present appeal arises out of an order dated 07.07.2023 passed by the Learned Single Judge in W.P.(C) No. 8935/2023.
2. The facts of the case reveal that the Appellant cleared 11th and 12th examinations with Physics, Chemistry and Mathematics from Uttar Pradesh State Board of High School and Intermediate Education and a certificate dated 06.06.2011 to that effect is on record. As the Appellant had an ambition to become a doctor, he studied Biology, Physics, Chemistry in the 11th Standard. Subsequently, the appellant completed his 12th with Biology

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as an additional subject as per Chapter XII, Regulation 17(2) of Uttar Pradesh State Board of High School and Intermediate Education. Thus, after studying Biology for two whole years and clearing the practical exam, a mark sheet was issued on 05.06.2013, which is also on record.

3. The Appellant has obtained a MBBS Degree from a foreign university and now in order to practice in India, he has to clear Foreign Medical Graduate Examination (FMGE) which is scheduled to be held on 30.07.2023.

4. It is an undisputed fact that for appearing in the FMGE, an eligibility certificate is required for which the Appellant has approached National Medical Commission (NMC). However, vide order dated 27.04.2023, his request was turned down and, being aggrieved by the same the Appellant preferred a writ petition before this Court.

5. The Learned Single Judge has declined to grant interim relief as the Appellant does not have an eligibility certificate issued by the NMC. Ms. Yoothica Pallavi has vehemently argued that the FMGE is scheduled to be held on 30.07.2023 and the appellant has already missed one chance. She has also argued that the prayer before the Learned Single Judge was to issue appropriate, writ order or direction directing the NMC to issue an eligibility certificate and during the pendency of the writ petition, only an interim order to permit him to appear in the FMGE, was sought.

6. Mr. T. Singhdev, learned counsel for the NMC has drawn the attention of this Court towards a judgment delivered by this Court in LPA 422/2023 titled *Aayushi Dineshbhai Prajapati v. Union of India & Ors.*

7. This Court has carefully gone through the aforesaid judgment, but refrains from expressing any opinion thereon as the issue is still pending

before the Learned Single Judge and we are only concerned whether to grant permission to the Appellant to appear in the FMGE or not.

8. The Court is of the opinion that the Appellant can be permitted to appear in the FMGE subject to final outcome of the writ petition. This is only to ensure that the Appellant is not prejudiced in the event he succeeds in the Writ Petition. Depriving him of this opportunity could result in causing delay as the next opportunity of appearing in the examination would arise after a significant period of time.

9. Accordingly, the present Appeal is allowed. As the examination is conducted by National Board of Examination in Medical Sciences, the Respondent No.3 is directed to permit the Appellant to appear in the examination provisionally. It is made clear that the appearance in the examination will not create any right or equity in favour of the Appellant and this Court has not observed anything on merits of the case as the main issue is still pending before the Learned Single Judge. With the aforesaid observations, the LPA stands disposed of.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J

JULY 17, 2023

N.Khanna