

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 20, 2022

+ W.P.(C) 8069/2021

APURV SHANKAR

..... Petitioner

Through: Mr. Kundan Kumar Mishra and
Mr. Arpit Srivastava, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Arnav Kumar and Mr. Harssh
Bhatia, Advs. for R1.
Mr. T. Singhdev, Mr. Abhijit
Chakravarty, Ms. Michelle B. Das,
Mr. Bhanu Gulati and Ms. Sumangla
Swami, Advs. for R2.
Mr. Kirtiman Singh and Mr. Waize
Ali Noor, Advs. for R3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:

“It is, therefore, most humbly prayed that this Hon’ble Court may kindly be pleased to issue an appropriate Writ/Directions/Orders in the nature of Certiorari/Mandamus or any other appropriate remedies and thereby:

I. Quash the decision as contained in Email dated 07.06.2021 (Annexure-P10) of Respondent no 2 ie National Medical Commission and thereby direct the Respondent No.2 to grant permission to the Petitioner to appear in the Screening Test conducted

by the Respondent No.3 .

II. Pass any such other order(s) and/or direction(s) that this Hon'ble Court may deem fit in the interest of justice."

2. The challenge in this petition is to an email dated June 07, 2021 of the respondent No.2, namely the National Medical Commission ('NMC', for short), the successor body of the erstwhile Medical Council of India ('MCI', for short). Vide the said email, the respondent No.2 has rejected the application of the petitioner dated February 22, 2021 seeking permission to appear in the Screening Test conducted by the respondent No.3, National Board of Examinations in Medical Sciences. The primary reason for the rejection was that the petitioner had obtained only 47.83% marks in Physics, Chemistry and Biology taken together in the 10+2 examination and as such could not have been granted the Eligibility Certificate for the Screening Test, in view of the provisions of the Indian Medical Council Act, 1956 (hereinafter referred to as "IMC Act, 1956") read with the statutory regulations made there under.

3. It is the case of the petitioner that he has cleared the Intermediate Examination (Science Faculty) from Bihar School Examination Board and secured over 50% aggregate marks in Physics, Chemistry, Biology and English. In the same year of passing his Intermediate Examination, the petitioner opted to pursue an MBBS course from B.P. Koirala Institute of Health Sciences, Dharan, Nepal. The petitioner, being successful in the selection process was able to secure a seat in MBBS course in the said institution. It is the case of

the petitioner that the said institution finds its place in Section 12 read with second Schedule of the IMC Act, 1956. Reference is made to the regulations framed by the erstwhile MCI, called Regulations on Graduate Medical Education, 1997 which prescribes 50% marks in Physics, Chemistry and Biology in aggregate for pursuing an MBBS course in India.

4. In 2001, Section 13 of the IMC Act, 1956 was amended, whereby sub-sections 4A, 4B and 4C were inserted, which talk about requirement of clearing a Screening Test and obtaining an Eligibility Certificate for students who have obtained medical qualification from outside India, to enroll with the IMC or any State Medical Councils. Reference is also made to Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002, ('Eligibility Regulations', for short) as notified on February 13, 2002, which stipulates that an Indian citizen who passes the qualifying examination either from India or any equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution on or after March 15, 2002 shall approach the Council for issuance of Eligibility Certificate for that purpose. On the same day, the erstwhile MCI notified the Screening Test Regulations, 2002, ('Screening Test Regulations', hereinafter) which stipulates that an Indian citizen possessing a primary medical qualification awarded by any medical institution outside India and who is desirous of obtaining provisional or permanent registration with the MCI or any State Medical Council on or after March 15, 2002 shall have to qualify Screening Test

conducted by prescribed authority for that purpose as per the provisions of Section 13 of the IMC Act, 1956.

5. The case of the petitioner is also that the MCI vide Press Note dated October 08, 2008 clarified that the requirement of Eligibility Certificate as well as Screening Test would “henceforth” be applicable to all the colleges, whether recognised under Section 12 or under Section 13 of the IMC Act, 1956, which, according to the petitioner has made it clear that before the issuance of the Press Note and the time when the petitioner took admission in the concerned college, the Eligibility Regulations and Screening Test Regulations were not applicable to the petitioner or his college. After successful completion of MBBS course and his one year internship, the petitioner, by Eligibility Registration Form, had on February 22, 2021 applied to the respondent No.2 for permission to appear in the Screening Test conducted by the respondent No. 3, however the same has been rejected by the respondent No.2, a reference of which has already made above. The submission of Mr. Kundan Kumar Mishra, learned counsel for the petitioner, is that the decision of the respondent No.2 is arbitrary and without taking into consideration its own Press Note dated October, 08, 2008 wherein it was clarified that the Screening Test needs to be taken by the candidates who have secured the qualification from an institute which is recognised under Section 12 and also included in the second Schedule of the IMC Act, 1956 and moreover, the petitioner has secured the admission in the institution in the year 2007, much before the Press Note was released i.e., on October 08, 2008, before which, it was only those persons from

institutions falling under third Schedule read with Section 13 of the IMC Act, 1956 who were required to appear in the Screening Test. In fact, it is his submission that by the said Press Note, the persons from the institutions under second Schedule read with Section 12 of the IMC Act, 1956 were also made to sit in the Screening Test for getting themselves registered with the National/State Medical Councils for the purpose of practising medicine in this country. That apart, it is his submission that the eligibility criteria for admission in MBBS course in India has been prescribed under Regulation 4 and 5 of the Graduate Medical Education Regulations, 1997, which stipulates certain percentage of marks in Physics, Chemistry and Biology in aggregate, excluding Mathematics, English or any other subject or any other eligibility criteria for persons from the colleges in a foreign country is arbitrary and irrational as well as *ultra vires* the constitutional provisions. Mr. Mishra stated that the petitioner was duly admitted in the college in Nepal, which falls under Section 12 of the IMC Act, 1956, after fulfilling criteria as per Rules and Regulations and the said institution is a college of eminence recognized by the Medical Regulatory Body of Nepal and also by the World Health Organisation. He stated that the regulatory body, i.e., the erstwhile MCI and now the NMC, recognises the institution from where the petitioner has secured MBBS. The admission process was governed by the Rules and Regulations of Nepal, and the action of the Regulatory Body in India in imposing the above said conditions is unconstitutional, being hit by extra-territorial operation of the regulations, apart being hit by the *vires* of Section 12 of the IMC Act, 1956, as well as Article 14 and Article

19 of Constitution of India. It is the endeavour of Mr. Mishra to state that in terms of Section 60 of the newly enacted National Medical Commission Act, 2019 ('NMC Act', for short), which consists of a saving clause, protects all the rights/regulations/orders passed under IMC Act, 1956 prior to its repeal. Further, Section 60 of the NMC Act, which is in the nature of a transitory provision, puts it beyond any discussion, the validity and effect of the Rules, Regulations, bye-laws, orders etc. passed under the IMC Act, 1956. In other words, Sections 60 and 61 of the NMC Act read together creates a regime of substitution of MCI by NMC as a successor-in-interest in all legal respects. Accordingly, the Press Note dated October 08, 2008 which was extended to colleges under Section 12 of IMC Act, 1956 only after its release, is fully applicable and binding upon the NMC on equal footing.

6. On the other hand, Mr. T. Singhdev, learned counsel appearing for respondent No.2, would justify the action of the respondent No.2 by stating that as the petitioner had only obtained 47.83% marks in Physics, Chemistry and Biology taken together in 10+2 examination and not 50 % marks as required under the statutory regulations, and as such, could not be considered eligible for admission to MBBS course in India. He further stated that because of such lack of eligibility, the petitioner could not have been issued the Eligibility Certificate to sit in the Screening Test. The attempt of the petitioner is only to bypass the regulations which are very clear. In this regard he has relied upon Section 13(4A) and 13(4B) of the IMC Act, 1956 read with the Eligibility Regulations and Screening Test Regulations, and as the

petitioner was ineligible for issuance of Eligibility Certificate in view of the fact that he was unable to obtain 50% in qualifying examination in the subjects of Physics, Chemistry and Biology taken together, he was rightly denied the Eligibility Certificate. He also stated that the Eligibility Regulations, more specifically, Regulation 8 therein, provides that the respondent No.2 shall consider an application for issuing Eligibility Certificate only if the candidate fulfills the eligibility criteria for admission in MBBS course in India i.e., minimum qualifying marks criteria in the subjects of Physics, Chemistry, Biology/Bio-Technology and English as prescribed in Graduate Medical Education Regulations, 1997. Reference is made to Regulation 2(f) and Regulation 3 of the Eligibility Regulations which provide that a person desirous of joining an Undergraduate Medical Course must fulfill the requisite qualifying criteria stipulated in the Graduate Medical Regulations, 1997. He laid stress on the fact that the candidate must necessarily secure 50% marks in the subjects of Physics, Chemistry and Biology taking together, apart from passing in the said subjects, along with English individually, in the case of General category students and 40% marks in the case of candidates belonging to Schedule Cast/Schedule Tribe and Other Backward Classes.

7. He contested the submissions made by Mr. Mishra by stating that the distinction sought to be brought about by Mr. Mishra between the medical institutions under Section 12 and those under Section 13, of the IMC Act, 1956, has been removed by the Supreme Court in its judgment titled *Yash Ahuja and Others v. Medical Council of India*

and Others, (2009) 10 SCC 313, wherein, according to him, the Supreme Court has held that a candidate securing MBBS qualification from an institution recognised under Section 12 and named in the second Schedule of the IMC Act, 1956 must also necessarily obtain an Eligibility Certificate and clear the Screening Test for registration under the IMC Act, 1956. In other words, it is his submission that the reliance placed by Mr. Mishra on the Press Note dated October 08, 2008 only clarifies the existing position under the IMC Act, 1956 as interpreted by the Supreme Court in its judgment in *Yash Ahuja (supra)*. He clarifies his submission by stating that in view of the law laid down by the Supreme Court it is clear that a candidate who intends to practise medicine in this country needs to have 50% marks in Physics, Chemistry and Biology combined in the qualifying exam of 10+2, and further has to clear the Screening Test conducted by the respondent No.3, the National Board of Examinations in Medical Sciences. He also stated that the issue is no more *res integra* in view of the judgment of the Supreme Court in the case of *Yash Ahuja (supra)*. That apart, he has also placed reliance on a judgment of the Division Bench of this Court in the case of *Rohinish Pathak v. Medical Council of India and Another, W.P.(C) 5907/2015*, decided on February 26, 2019.

8. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the petitioner needs to have 50% marks in aggregate in the subjects of Physics, Chemistry and Biology for being issued an Eligibility Certificate to sit in the Screening Test, having secured MBBS qualification from a foreign

medical institution, to get himself registered in India under the provisions of the IMC Act, 1956. The submission of Mr. Mishra in his challenge to the impugned email is that in view of the Press Note dated October 08, 2008, any requirement for a candidate securing MBBS degree from an institution outside India to have an Eligibility Certificate issued by the MCI under the Eligibility Regulations, shall be prospective i.e., after October 08, 2008 and not before that. The petitioner having secured the admission in the college in Nepal in the year 2007, shall not be bound by the said Eligibility Regulations.

9. Suffice to state that this issue is no more *res integra*, in view of the judgment of the Supreme Court in the case of *Yash Ahuja (supra)*. The petitioners/appellants therein, who were students/persons who had completed MBBS course from various institutions in Nepal recognised by the MCI, sought directions to grant them provisional and permanent registration with the National/State Medical Councils, without insisting that they qualify the screening test. The Supreme Court noted that Section 12 of the IMC Act, 1956 deals with recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. The MCI is empowered to enter into negotiations with the authority in any country outside India which by law of such country is entrusted with the maintenance of a register of medical practitioners, for settling a scheme of reciprocity for the recognition of medical qualifications. Once such a scheme is settled, the Central Government is authorised to amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised. The medical qualifications granted by

medical institutions outside India which are included in the Second Schedule are recognised medical qualifications. Subsequently, one such scheme was entered into between the respective Medical Councils of India and Nepal. Over a period of time, it was noticed that a large number of private agencies sponsored Indian students for medical studies in institutions outside India for commercial considerations. Such students also included the students who failed to fulfill the minimum eligibility requirements for admission to medical courses in India. Serious aberrations were noticed in the standards of medical education available in some of the foreign countries which were not on par with the standards of medical education available in India. Due to lack of uniformity in the standards of medical education in various foreign countries, it was decided to make a provision in the IMC Act, 1956 to enable the MCI to conduct a screening test in order to satisfy itself with regard to the adequacy of knowledge and skills acquired by citizens of India who obtain medical qualifications from universities or medical institutions outside India before they are granted registration to practise medicine in India. Accordingly the IMC Act, 1956 was amended by the Indian Medical Council (Amendment) Act, 2001 and a new Section 13(4-A) was inserted, which requires that a person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as a medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any medical register maintained by a State Medical Council or to have his name entered in the Indian

Medical Register, unless he qualifies the screening test in India prescribed for such purpose. Later, the MCI, on inspection of the institutions in Nepal, found certain deficiencies in the said institutions. The MCI subsequently decided to withdraw the recognition granted to them and also deny provisional/final registration under Section 12 of the IMC Act, 1956 to any student from such institutes who did not pass the Screening Test. They were also informed that no permanent registration certificate would be issued to such students who have already taken Provisional Registration Certificate.

10. The petition filed before the Supreme Court included a prayer for quashing the last paragraph of the Press Note dated October 08, 2008. The question before the Supreme Court was whether the petitioners/appellants can be subjected to the Screening Test postulated by the sub-section 4A of the Section 13 of the IMC Act, 1956, as the appellants/petitioners possess medical qualification mentioned in the second Schedule. The Supreme Court in paragraphs 71, 76 and 77 held as under:-

“71. What is relevant to notice is that Section 11 of the Act refers to the First Schedule whereas Section 12 refers to the Second Schedule and Sections 13(1) and 13(2) refer to Part I of the Third Schedule and Sections 13(3) and 13(4) refer to Part II of the Third Schedule. However, sub-sections (4-A) and (4-B) of Section 13 do not refer to any schedule at all because by those sub-sections general provisions are enacted which apply to all the cases where a citizen of India has obtained or is desirous of obtaining medical qualification granted by any medical institution in any country outside India. The provisions of sub-sections (4-A) and (4-B) would have applied to the cases covered by Section 14 of the Act

also but for sub-section (4-C) of Section 13. Sub-section (4-C) of Section 13 specifically provides that nothing contained in sub-sections (4-A) and (4-B) shall apply to the medical qualifications referred to in Section 14 for the purposes of that section. If the legislature was so minded, nothing prevented it from laying down in Section 13(4-C) that the provisions of sub-sections (4-A) and (4-B) would also not apply to the cases covered by Section 12 of the Act. If the arguments of the learned counsel for the appellants are accepted, the Court will have to rewrite sub-section (4-C) by laying down that the provisions of sub-sections (4-A) and (4-B) would also not apply to the cases covered by Section 12 of the Act. Such a course is neither permissible nor warranted by the facts of the case.

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76. The argument that MCI has admittedly understood and applied the provisions of the Act by releasing press note to mean that the Screening Test would not be necessary for students who have obtained degree from foreign medical institutions recognised under Section 12 of the Act and, therefore, MCI is precluded in insisting that the students, who have obtained degrees from foreign medical institutions, is devoid of merit. It is true that at one stage MCI had released a press note clarifying for the information of the general public that eligibility requirements for taking admission in an undergraduate medical course mentioned in the Foreign Medical Institutions Regulations, 2002 and the Screening Test Regulations, 2002 would not be applicable to the students joining an undergraduate medical course in foreign countries, recognised and included in the Second Schedule under Section 12 of the Act. However, this was the understanding of MCI, which is one of the parties before the Court. The scope of Section 13(4-A) is quite clear and covers all foreign medical institutions falling within the ambit of Sections 12 and 13 of the Act.

77. *On a close and careful reading, provisions of the amending Act of 2001 with the Eligibility Requirement Regulations and the Screening Test Regulations, both of 2002, it becomes at once clear that MCI is obliged to stipulate the Screening Test in the case of all those candidates, who obtained medical qualification from medical institutions outside India falling within the purview of Sections 12 and 13 of the Act in view of the statutory provisions of Section 13(4-A) of the Act. The press release cannot be interpreted as precluding MCI from canvassing correct import of the provisions of the Act. In any view of the matter, the Court is of the firm opinion that press release by MCI cannot preclude the court from placing correct interpretation of the Act. Therefore, the said plea has no substance and is hereby rejected.”*

11. It is apparent from paragraph 77 of the Judgment as reproduced above, that the Supreme Court has also considered an identical submission made on behalf of the petitioners/appellants in that case and has stated that the Press Note of October 08, 2008 cannot be interpreted to preclude either the MCI or the Court in canvassing the correct interpretation of the IMC Act, 1956.

12. That apart, the Division Bench of this Court in **Rohinish Pathak (supra)** has clarified that a claim for an eligibility certificate can be granted only if the person is qualified to be eligible for admission to an MBBS course in India in terms of the Graduate Medical Examination Regulations, 1997, and in the absence of such qualification, he shall not be entitled to sit for the Screening Test, in view of Regulation 4(2) of the Screening Test Regulations. The observations made by the Division Bench in paragraphs 8 and 21 are

reproduced as under:

“8. It is evident from Regulation 3, read with Regulation 2(f), of the ERR that the petitioner’s claim for an eligibility certificate can be granted only if he was qualified to be eligible for admission to an MBBS course in India, in terms of the GMER. Regulations 5, 8(ii), 9 and 10 of the ERR indicate the mandatory nature of the eligibility criteria prescribed therein. They empower the MCI to investigate the correctness of the eligibility information supplied by the candidate, verify the same, and provide for the eligibility certificate to be issued only if the said criteria are satisfied.

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21. In the absence of meeting the qualifying criteria for obtaining an eligibility certificate, the petitioner is also not entitled to sit for the screening test. This is clear from a plain reading of Regulation 4(2) of the STR.....”

13. Hence, it is clear that in view of the provisions of the IMC Act, 1956, read with the regulations made there under, the petitioner was necessarily required to be eligible for admission to an MBBS course in India, i.e., he should have possessed 50% marks in Physics, Chemistry and Biology taken together for him to be issued the Eligibility Certificate to sit in the Screening Test. The petitioner, admittedly having only 47.83% marks in the three subjects, was ineligible for admission to an MBBS course in India, and as such, could not have been issued the Eligibility Certificate to enable him to sit in the

Screening Test.

14. I do not see any illegality in the impugned email. The application of the petitioner dated February 22, 2021 was rightly rejected by the respondent No.2.

15. The present petition is devoid of merit and the same is dismissed, but with no order as to costs.

V. KAMESWAR RAO, J

APRIL 20, 2022/ds

