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W.A.No.1141 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Appeal No.1141 of 2022

Ouwshitha Surendran

.. Appellant

Versus

1. National Medical Commission
Pocket – 14, Sector -8, Dwarka Phase – 1
New Delhi – 110077, INDIA.

2.National Board of Examinations
Rep.by its Executive Director
Medical Enclave, Ansari Nagar
Mahatma Gandhi Marg (Ring Road)
New Delhi – 110 029.

3.Association of Indian Universities
AIU HOUSE 16, Comrade Indrajit Gupta Marg
Opposite National Bal Bhawan
Near I.T.O., New Delhi, Delhi 110 002.

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 25.10.2021 made in W.P.No.12782 of 2021 and allow the above Writ Petition as prayed for.



W.A.No.1141 of 2022

WEB COPY

For Appellant : Mr.Srinath Sridevan, Senior Counsel
for Mr.TK.Bhaskar

For Respondents : Mrs.Shubharanjani Ananth for R1
Mr.V.P.Raman for R2
Mr.S.M.Deenadayalan for R3

JUDGMENT

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

The brief facts leading to the filing of this Writ Appeal are, that the appellant, namely, *Mrs.Ouwshitha Surendran*, is an Overseas Citizen of India. The appellant pursued her school education in India in the Central Board of Secondary Education till her class 10 from Bhavan's Gandhi Vidyashram, Kodaikanal, Tamil Nadu. The appellant's family moved to Sri Lanka and there she completed her 12th standard from Pearson Excel curriculum. Thereafter the appellant completed her MBBS degree from Sinchuan University, China. The appellant had returned to India and she is also married to an Indian.

2. In the matter of medical practice in India, Overseas Citizens of India are also treated on par with the citizens of India. As such any person who

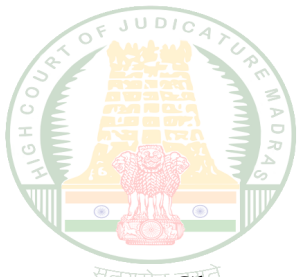


W.A.No.1141 of 2022

WEB COPY

has pursued her MBBS degree outside India has to undertake and clear the Foreign Medical Graduate Examination conducted by the National Medical Commission(NMC). The candidates have to apply for the said examination along with the Eligibility Certificate issued by the NMC. The appellant's application in R. 15012/001636/2021 was rejected on the ground that she hasn't studied English vide e-mail dated 06.05.2021. The petitioner therefore made a detailed representation on 10.05.2021, bringing to the notice of the NMC that (i) all through her school and college, her medium of instruction is only English; (ii) She had studied English as a subject upto 10th Standard in the CBSE curriculum; (iii) She has also cleared IELTS examination with a score of 7.5/9; (iv) and that she is proficient in English.

3. The appellant thereafter, approached this Court and by Order dated 10.06.2021 in W.P. No. 12558 of 2021, the NMC was directed to consider the representations of the petitioner and in the event the same being considered favourably, to permit her to write the examinations conducted on 18.06.2021. By an order dated 14.06.2021, referring to Graduate Medical Education Regulations, 1997, more particularly to Regulation No. 5 and



W.A.No.1141 of 2022

Chapter 4 - Eligibility and Qualification Code -7 of National Eligibility-cum-

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Entrance Test, the appellant's representation was rejected on the ground that she did not study English as a subject.

4. The appellant therefore filed W.P. No.12782 of 2021, challenging the said Order. The Writ petition was resisted by filing of counter affidavit. It is the case of the NMC that the curriculum underwent by the petitioner at the 12th level does not have English as a mandatory subject. It is contended that the appellant did not undergo regular, continuous and co-terminus/simultaneous teaching and training in the subject of English as per the provisions of eligibility requirement for taking admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002, read with Graduate Medical Education Regulations, 1997, as well as the Code-7 under Chapter 4 of the NEET – UG, 2021.

5. Pending the Writ Petition, by an interim order, the appellant was also permitted to undertake the examination and the results were directed to be placed in a sealed cover. Thereafter, by a Judgment dated 25.10.2021, the



W.A.No.1141 of 2022

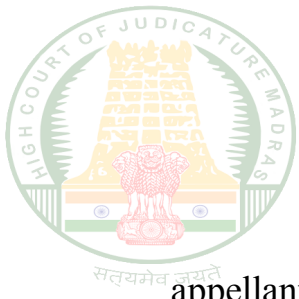
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Writ Petition was dismissed. The Learned Single Judge considered the issue and held that the appellant did not qualify as per the Rules. The Rules are mandatory. The Hon'ble Supreme Court of India in the case of ***Kalaji Narayana Rao University of Health Sciences -Vs- Srikeerthi Reddi Pingle & Ors¹*** has directed that the rules be scrupulously followed. Therefore, the appellant was held unqualified and the writ petition was dismissed. Aggrieved by the same present Writ Appeal is filed.

6. We heard *Mr. Srinath Sridevan*, Learned Senior Counsel on behalf of the Petitioner, *Ms. Shubaranjani Ananth*, Learned Counsel on behalf of NMC and *Mr. V.P. Raman*, Learned Counsel on behalf of the National Board of Examinations and *Mr. S.M. Deendayalan*, for the Association of Indian Universities and perused the records of the case.

7. *Mr. Srinath Sridevan*, the Learned Senior Counsel would submit that firstly, in this case, the regulations does not prescribe English as a mandatory subject unlike Physics, Chemistry and Biology and therefore, the

¹ (2021) 14 SCC 134



W.A.No.1141 of 2022

WEB COPY

appellant having an equivalent qualification is eligible. Secondly, the dictum of the Hon'ble Supreme Court in *Kalaji's case* (cited supra) is in respect of Biology and the same has to be applied in the context of the subject being English and the appellant is proficient in English having undergone her entire studies with English as Medium of Instruction. In the course of the arguments, the Learned Senior Counsel also brought to the notice of this Court about the Public Notice dated 22.11.2023, whereby the requirement of English as a co-terminus subject has been done away with retrospectively and therefore would pray that the appeal be allowed.

8. The Learned Senior Counsel relied upon the decisions

(i) of the *Delhi High Court in Anshul Aggarwal -Vs- Union of India and Others*² ;

(ii) of the Bombay High Court in *Kamini Brijlal Khanna -Vs- Vice-Chancellor Marathwada University and others*³ ;

(iii) of the Delhi High Court in *Pawan Kumar Gupta & Ors -Vs- Medical Counsel of India and Ors*⁴ .

2 (2018) SCC Online DEL 8965

3 (1984) SCC Online Bom 90

4 (2012) SCC Online Del 858



W.A.No.1141 of 2022

WEB COPY

9. Per Contra, *Ms. Shubaranjani Ananth*, the Learned Counsel for NMC would submit that the Rules are mandatory and there cannot be any permission for the appellant in violation of the Rules. When the appellant has not studied English as a subject, even the latest relaxation by public notice dated 22.11.2023 cannot come to her aid.

10. In support of her submission the Learned Counsel relied upon the

(i) Judgment of the Hon'ble Supreme Court of India in *Kalaji's case* (cited supra)

(ii) Judgment of the Delhi High Court and the Order passed in SLP in the matter of *Raghukul Tilak -Vs- Union of India*;

(iii) Judgment of the Supreme Court of India in *Guru Nanak Dev University -Vs- Sanjay Kumar Katwal and another*⁵;

(iv) Judgment in *Maharashtra State Board of Secondary and High Secondary Education and Another -Vs- Paritosh Bupeshkumar Sheth and*

5 (2009) 1 SCC 610



11. We have considered the rival submissions on either side and perused the material records of the case. So as not to indulge in an academic exercise, we directed the sealed cover of the results to be produced before us and it is seen that the the appellant has cleared the Foreign Medical Graduates Examination and as such we proceed to consider the case on merits. This is an extraordinary situation and we consider the Regulations with reference to the peculiar facts and circumstances of this case

12. The fact that the appellant has duly completed MBBS Degree in an institution/university recognized by the NMC is not disputed. Like any other candidate who had obtained the qualification in overseas, the appellant has to undertake the Screening Test and only upon clearing the same, she will be entitled to register herself in India. Regulation -4 of Screening Test Regulations, 2002, reads as under :

“4. Eligibility Criteria: No person shall be allowed to appear in the screening test unless:

1.

⁶ (1984) 4 SCC 27



WEB COPY



W.A.No.1141 of 2022

2. *he/she had obtained -Eligibility Certificate from the Medical Council of India as per the -Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002-. This requirement shall not be necessary in respect of Indian citizens or overseas citizens of India who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002.”*

13. Thus, the appellant had applied for Eligibility Certificate. The NMC will issue eligibility certificate, if only the appellant is eligible as per the Graduate Medical Education Regulations, 1997. Regulation 4(2) is as follows:

“4(2) He/She has passed qualifying examination as under:

*(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology/Biotechnology and Mathematics or any other elective subjects **with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training** after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education;*

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre~professional training before admission to the Medical colleges;

Or

(b) The intermediate examination in science of an Indian University/Board or other recognised examining body with



WEB COPY



W.A.No.1141 of 2022

Physics, Chemistry and Biology/Bio-technology which shall include a practical test in these subjects and also English as a compulsory subject;

Or

(c) The pre-professional/pre-medical examination with Physics, Chemistry and Biology/Bio-technology, after passing either the higher secondary school examination, or the pre-university or an equivalent Examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry and Biology/Bio technology and also English as a compulsory subject;

Or

(d) The first year of the three years degree course of a subjects provided the examination is a “University Examination and candidate has passed 10-2 with English at a level not less than a core course;Or

(e) B.Sc. examination of an Indian University, provided that he/she has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology)/Bio-technology and further that he/she has passed the earlier qualifying examination with the following subjects ~ Physics, Chemistry, Biology and English.

Or

(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology/Biotechnology including practical test in each of these subjects and English.”

(Emphasis supplied)

14. On a careful perusal of the above rule, it would be clear that while in other categories English is required as ‘Subject’, in category (a) alone, it is not required as a subject but the requirement is “English at a level not less



W.A.No.1141 of 2022

WEB COPY

than core course of English as prescribed by the National Council of Educational Research and Training”. The appellant has 12 years of study and her qualification equivalent to Higher Secondary is not in dispute. She has studied Physics, Chemistry and Biology as subjects. The appellant has cleared the IELTS examination conducted by the British Council, United Kingdom. As per the Country Specific qualifications published by the said agency, in respect of India, it’s equivalency is as follows :

India	National Board Standard XII	70 %	70 %	80 %	80 %
80 %India	State Board Standard XII	80 %	80 %	90 %	90 %

15. As far as the National Counsel of Educational Research and Training (NCERT) is concerned, it has framed the Learning Outputs for English language in 12th Standard level vide the document in https://ncert.nic.in/pdf/publication/otherpublications/Draft_LO.pdf. As per the same,

“Learners at the end of the senior secondary stage, classes XII are expected to;

* acquire the ability to listen and understand, and should be able to employ non-verbal clues to make connections and draw inferences.



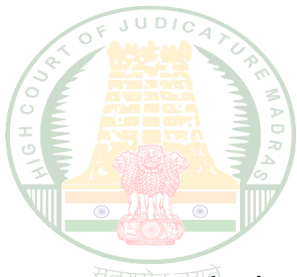
WEB COPY



W.A.No.1141 of 2022

- * develop the habit of reading for information and pleasure; draw inferences and relate texts to previous knowledge; read critically and develop the confidence to ask and answer questions.
- * employ her communicative skills, with a range of styles, and engage in a discussion in an analytical and creative manner.
- * identify a topic, organize and structure thoughts and write with a sense of purpose and an awareness of audience.
- * to understand and use a variety of registers associated with domains such as music, sports, films, gardening, construction work, etc.
- * use a dictionary and other materials available in the library and elsewhere, access and collect information through making and taking down notes, etc.
- * use language creatively and imaginatively in text transaction and performance of activities.
- * develop sensitivity towards their culture and heritage, aspects of contemporary life and languages in and around the classroom.
- * refine their literary sensibility and enrich their aesthetic life through different literary genres.
- * become sensitive to the inherent variability that characterizes language and notice that languages keep changing all the time.
- * appreciate similarities and differences across languages in a multilingual classroom and society.
- * notice that different languages and language varieties are associated with different”

16. Thus, with the undisputed score of 7.5/9, equivalent to 80 % in 12th standard of the National Board and 90 % in 12th standard of the State Boards of India, in IELTS and having studied English upto 10th standard in CBSE curriculum and having undergone all her education upto MBBS Degree



W.A.No.1141 of 2022

WEB COPY

only in English Medium, there can be no doubt that the appellant has the qualification in English to the level as not less than the core course of English as prescribed by NCERT. As such, the appellant qualifies as per Regulation 4 (2) (a) of the Regulations. NMC as well as the Learned Single Judge went as if it was mandatory to have 'English' as subject.

17. The Hon'ble Supreme Court of India in *Kalaji's case* (cited supra), was considering the Regulation 4(2)(b) of the self same regulations, more particularly 'Biology' as a compulsory subject, and while holding that the same has to be adhered to scrupulously, also lays emphasis on the logic and the rationale behind the rule. It is essential to quote the relevant passages which read as follows :

“15. In the opinion of this Court, there is a rationale and compelling logic on the part of the University to say that the candidate should have studied biology or biological sciences (apart from the other two science subjects, along with the further requirement of having studied English) in all the relevant years during the intermediate or at 10+2 level. Further, the reference to having studied in the first year in a degree course, at the college level with the said subject, carries with it, the implication that the student would have necessarily undergone academic study and training in the said three subjects at the 10+2 or intermediate level (without which, admission in a degree course is inconceivable in India). The further emphasis on having attended or undertaken practical lessons, (again at that level, in each of the years concerned)



WEB COPY



W.A.No.1141 of 2022

clearly signifies that a candidate should have undergone study in those subjects for the last two years at school or intermediate college level. The regulation is further clear that the examination score (marks) in Mathematics shall not be taken into consideration for the purpose of admission to a medical course, in reckoning merit or performance in the qualifying examination.

21. The approach and construction placed by the High Court, in this Court's opinion, undermines the intent behind the MCI's insistence that a certain kind of education should be undergone, which is that each candidate for the MBBS course should have undergone study in Physics, Chemistry and Biology, in each of the levels (i.e. the two years of 10+2 board examination, or the intermediate examination concerned) with practical exams, in each of those years; that he or she should also have had English as a subject, and that the score in Mathematics would be ignored and not taken into consideration [The last negative stipulation, by a note, applicable to all the sub-clauses of Regulation 4(2).] . It would be, in this context, necessary to clarify that the equivalence relied on by the Telangana Intermediate Board in this case, merely alluded to the general equivalence in terms of education at the intermediate level, without stipulating whether the qualifications were equivalent in terms of the subjects in which she undertook courses for the relevant years.”

(Emphasis supplied)

18. Thus, looking at regulation purposively, also, it is not by way of colonial hangover, English is insisted upon. Critics may say that the necessity of knowledge of Indian Languages, which is necessary for any person in Medical practice as she has to treat/advice patients in India, is absent in the regulations. However, the intent behind the rule is that as on date, the literature and lessons in the field are mostly in English and accordingly English



W.A.No.1141 of 2022

WEB COPY

is made essential so that the candidate who undergoes the course comes out as a competent professional. Thus, viewing purposively also, it can safely be said that the appellant had the requisite qualification to enter and undergo MBBS Degree.

19. Thirdly, it may be seen that though originally, counter affidavit is filed that English should have been studied simultaneously as a co-terminus subject, subsequently, the Regulation is now been watered down considerably by the Public Notice dated 22.11.2023 and it is essential to reproduce the relevant portion which reads thus :

“7. The National Medical Commission in its meeting held on 14/06/2023, after detailed deliberations while taking into consideration the New Education Policy, which permits great extent of flexibility in the study of various subjects in class 12th, decided that the previous approach of the erstwhile Medical Council of India needs to be revisited by permitting candidates to undertake study of the requisite subjects (physics, chemistry, biology/biotechnology along with English), even as additional subjects after passing class 12th from duly recognised boards by the concerned Govt. Such candidate shall be permitted to appear in NEET – UG test and resultantly also be eligible for grant of eligibility certificate.

8. The present decision shall be applicable retrospectively also on candidates whose applications for grant of eligibility certificate have been rejected on the grounds contemplated in the present public notice. ...”

(Emphasis supplied)

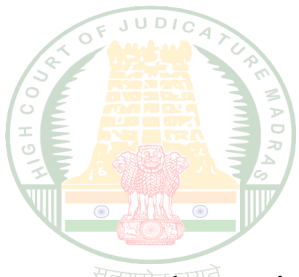


W.A.No.1141 of 2022

WEB COPY

20. Thus it can be seen that with the evolving multi-disciplinary trend, students are undergoing the Higher Secondary Course in various combinations. With courses like liberal arts, students are permitted to switch over to the subjects of their choices and interests. Similarly different curricula are now available in the context of globalisation of education. Accordingly Government of India has framed the New Education Policy, which has lead to dilution of what was contemplated as a straight jacket rule. Thus, when the rule itself now stands retrospectively amended to permit the study of any missing subject as additional subject, and the policy of the Government of India is to welcome the Overseas Citizens of India with these kind of professional qualification to its fold, then if the case of the appellant is considered in the light of these developments, the original impugned order cannot survive.

21. The appellant has undergone her education in competent and proper institutions. She has completed her MBBS Course by proper 10 +2 + 5 years. Like any other student, she is also entitled to lead a professional life and career and her case deserves consideration empathetically. To make her sit at



W.A.No.1141 of 2022

home, inspite of her qualification would cause gravest prejudice to her. For all the above reasons, this Writ Appeal is bound to succeed.

22. In the result,

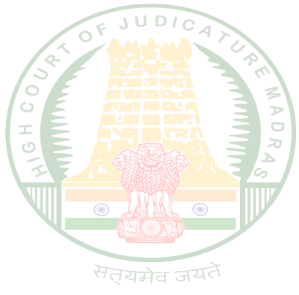
- (i) W.A. No.1141 of 2022, is allowed;
- (ii) The Order of the Learned Single Judge dated 25.10.2021 in W.P. No. 12782 of 2021 stands set aside;
- (iii) W.P. No. 12782 of 2021, stands allowed on the following terms :
 - (a) The impugned order dated 14.06.2021 of the first respondent/NMC shall stand quashed;
 - (b) The first respondent shall issue eligibility certificate to the appellant and consequently declare the results of her Screening Examination of Foreign Medical Graduates and register her as a Medical Practitioner, if there is no other impediment;
- (iv) No costs.

(S.V.G., C.J.,)

(D.B.C., J.,)

10.01.2024

Index : Yes
Speaking order
Neutral Citation : Yes
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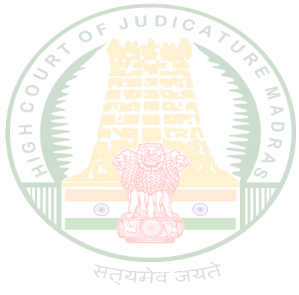
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To

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**THE HON'BLE CHIEF JUSTICE
and
D.BHARATHA CHAKRAVARTHY, J.,**

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Order made in
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