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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 20 May 2024
Pronounced on: 4 June 2024

+ W.P.(C) 3356/2022 and CM APPL. 9804/2022

HEMICA RANI SINGH Petitioner
Through: Mr. Sudhir Naagar and Mr.
Piyush Aggarwal, Advs.

versus

NATIONAL MEDICAL
COMMISSION & ANR. Respondents
Through: Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Kushagra Kumar, Advocate,
for UOI.
Mr. Tanoodbhav Singhdev, Mr. Bhanu
Gulati and Mr. Abhijit Chakravarty, Advs.
for R-1/NMC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT
04.06.2024

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W.P.(C) 3356/2022

The *lis*

1. The petitioner, who has passed her MD course from Davao Medical School Foundation Inc. (DMSFI), Davao City, Philippines, in 2019, seeks to practice medicine in India, for which she has to appear in the Foreign Medical Graduate Examination (FMGE) – also known



as the “Screening Test”. The petitioner applied to the National Medical Commission (NMC), purportedly under Regulation 4(2)¹ of the Screening Test Regulations, 2002, for being issued an Eligibility Certificate as would enable her to undertake the FMGE. Her application for issuance of an Eligibility Certificate stands rejected by the NMC by communication dated 27 November 2021 on the ground that the petitioner joined the DMSFI in Philippines before completing her schooling, which was not acceptable as per Regulations of the NMC. The petitioner assails the said communication.

Facts

2. The petitioner was born in Philippines on 20 March 1995. Her parents are Indians. She is an Indian citizen and the holder of an Indian passport.

3. The petitioner completed her secondary schooling (equivalent to Class X in India) from the Ateneo de Davao University, Matina, Davao City, Philippines in 2010-2011.

¹ 4. **Eligibility Criteria:** No person shall be allowed to appear in the screening test unless:
(1) he/she is a citizen of India and possesses any primary medical qualification, either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organisation; or which is confirmed by the Indian Embassy concerned to be a recognised qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated;
(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 who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002.



4. No system of Senior Secondary School Education, equivalent to Class X and Class XII in India, was prevalent in Philippines till 2016. It is not disputed that the extant laws in Philippines, at the time when the petitioner completed her secondary course from the Ateneo de Davao University, required her to undergo a four year degree course (known as “the BS course”) after her secondary schooling, in order to be eligible for admission to a medical school.

5. The petitioner, accordingly, underwent the four year BS course after having completed her secondary education from the Ateneo de Davao University, from the San Pedro College, Davao City, Philippines. The course spanned 2011 to 2015.

6. On clearing her BS course in 2015, the petitioner became eligible for admission to the MD course in Philippines, which is a Primary Medical Qualification (PMQ) in Philippines and is admittedly equivalent to the MBBS qualification in India. She, therefore, obtained admission to the DMSFI, which is a recognized medical college as per Part II of the Third Schedule of the Indian Medical Council Act, 1956 (“the IMC Act”). For this, the petitioner also had to undergo the National Medical Admission Test (NMAT) in Philippines and obtain the prescribed cut-off marks. She did so, and was issued an Eligibility Certificate by the CHED (Commission of Higher Education), Philippines, which is required for an Indian student in Philippines to obtain admission to a medical course.



7. The petitioner successfully completed her MD course from the DMSFI in 2019.
8. While the petitioner thus pursuing her MD course, in 2016-2017, the Government of Philippines introduced a two year K-12 program, to be undertaken by a student after secondary schooling. Successful completion of the K-12 program resulted in the student being awarded a Senior High School Diploma, which stands recognized, by the Association of Indian Universities (AIU), as equivalent to the Senior Secondary School Certificate (Class XII) qualification in India.
9. The CHED issued a certificate on 8 November 2019, certifying that, as the petitioner had cleared her secondary examination, and had also undergone the four year BS course which, at the time, was necessary for a student to obtain admission to a medical course in Philippines, the petitioner was not required to undergo the K-12 program.
10. Nonetheless, in order to avoid complications and confusion and by way of abundant caution, the petitioner also cleared the K-12 program, and was duly issued a certificate in that regard by the Davao Jones Academy, Philippines.
11. Having passed her MD course from the DMSFI, Philippines, the petitioner applied to the Medical Council of India (MCI), now rechristened as NMC, for being issued an Eligibility Certificate in



order to undertake the FMGE and be eligible to practice as a medical professional in India.

12. The Board of Governors in supersession of the MCI (“the BOG” hereinafter), which was the interim body which had replaced the MCI before the NMC came into existence, wrote to the petitioner on 30 December 2019, requiring the petitioner to provide her Class X, Class XI and Class XII mark sheets, which were necessary for issuing an Eligibility Certificate to the petitioner. The petitioner, in her response dated 21 January 2020, pointed out that she was educated in Philippines and that she had followed the education system in Philippines from the time of her basic education till obtaining the MD degree. She clarified that she had never been enrolled for admission in India for any academic purpose. The response further pointed out that, in Philippines, the prerequisites, for an Indian student to undertake the MD course, were passing of secondary school, undertaking the four year BS course thereafter, and obtaining the cut off in the NMAT as set by the CHED. These requirements, it was pointed out, had been met by the petitioner. That apart, though the CHED had clarified that the petitioner was not required to undertake the K-12 course as she had already cleared the four year BS course, the petitioner, nonetheless, also undertook and completed the K-12 course. It was also submitted that the four year BS course included, in it, Physics, Chemistry, Biology and English. As such, it was submitted that the four year BS course was at least equivalent, if not superior, to Class XI and Class XII in India. Thus, the petitioner submitted that she possessed all necessary qualifications to be issued



an Eligibility Certificate for participating in the FMGE.

13. On 11 June 2020, the BOG issued another communication to the petitioner, requiring her to provide an AIU Certificate of Equivalence and her Class XII marksheet reflecting the marks/grades obtained by her in Physics, Chemistry, Biology and English.

14. The petitioner forwarded, to the NMC, an Equivalence Certificate dated 19 September 2021 issued by the AIU, equating the Senior High School Diploma obtained by the petitioner consequent to undertaking and clearing the K-12 course with the 12 year Senior Secondary School Certificate issued by the Central Board of Secondary Education (CBSE).

15. The NMC, by the following communication dated 27 November 2021, rejected the petitioner's application for issuance of Eligibility Certificate on the ground that she joined medical school before completing her schooling, which was not acceptable as per the Regulations issued by the NMC:

“NATIONAL MEDICAL COMMISSION

Dear HEMICA RANI SINGH,

Your application R.15012/009193/2021-Regn has been rejected. Kindly refer to the NMC comments: As per the records the candidate has joined her medicine course in 2015. She has completed her 10th in 2011 and 11th and 12th in 2020-2021. As she has joined medical school before completing her schooling which is not acceptable as per National Medical Commission, regulations. Hence, the application is treated as rejected.



Thank You!!²

NMC Support Team.”

16. Assailing the above communication, the petitioner has instituted the present writ petition before this Court, seeking issuance of an appropriate writ quashing it and setting it aside.

17. The NMC has filed a counter affidavit by way of response to the writ petition. In the counter affidavit, it is acknowledged that the AIU has, by the Equivalence Certificate dated 19 September 2021, granted equivalence of the Senior High School diploma obtained by the petitioner consequent to undertaking the K-12 course in Philippines with 10+2 Senior School Certificate in India (SSC). However, this certificate, it is asserted, can be of no avail to the petitioner as the Senior High School diploma was obtained after the petitioner had obtained her PMQ in Philippines, which was her MD degree. Prior to undertaking her MD course, she had not obtained any qualification which stands recognized by the AIU as equivalent to 10+2 in India. There is no such declaration of equivalence of the four year BS course undertaken by the petitioner in Philippines, before enrolling for the MD course with 10+2 in India.

Rival contentions

18. I have heard Mr. Sudhir Naagar, learned Counsel for the petitioner and Mr. Tanoodbhav Singhdev, learned Counsel for the

² One is given to wonder whether the two exclamation marks were intended to introduce an element of irony. Perhaps the NMC would do better to punctuate its communications more appropriately.



NMC, at length.

19. Inasmuch as case of the petitioner's case stands adequately distilled in the writ petition, I deemed it appropriate to call, in the first instance, upon Mr. Singhdev to justify the impugned decision dated 27 November 2021.

Initial submissions of Mr. Singhdev

20. Mr. Singhdev took me to the Regulations of Graduate Medical Education 1997 ("the GME Regulations") issued by the MCI in exercise of the powers conferred by Section 33 of the IMC Act, as amended up to May 2018. Adverting to Regulation 4 of the GME Regulation, Mr. Singhdev submits that, for a candidate who has cleared her, or his, Class XII examination in India, to obtain admission to an MBBS course, in India, she, or he, has to qualify the National Eligibility-cum-Entrance Test (NEET), for which purpose, the candidate has to satisfy the requirements envisaged in sub-regulations (1)³ and (2) of Regulation 4. Regulation 4(2) specifies various categories of qualifying examinations, the passing of which would entitle a candidate to undertake the NEET for admission to an MBBS course. Mr. Singhdev draws particular attention to sub clauses (a) and (f) of Regulation 4(2)⁴. Sub clause (a) refers to a Higher Secondary

³ 4. **Admission to the Medical Course – Eligibility Criteria:** No candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery course until he /she has qualified the National Eligibility Entrance Test, and he/she shall not be allowed to appear for the National Eligibility-CumEntrance Test until:

(1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS.

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

(a) The higher secondary examination or the Indian School Certificate Examination which is



examination or the Indian School Certificate Examination equivalent to the 10+2 Higher Secondary Examination after 12 years of study, of which the last two years of study should comprise Physics, Chemistry, Biology/Bio-technology and Mathematics with English. Sub regulation (f) also entitles a candidate, who has passed “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/Bio-technology including practical test in each of these subjects and English” to be eligible to undertake the NEET for admission to an MBBS course.

21. Mr. Singhdev submits that the qualifications envisaged by Regulation 4 of the GME Regulations, which a candidate who desires to obtain admission to an MBBS course in India has to satisfy, would apply *mutatis mutandis* to an Indian citizen, who desires to join an undergraduate medical course in any foreign medical institution on or after 15 March 2002 by virtue of Regulation 3⁵ of the Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 (hereinafter

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

(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.

⁵ 3. An Indian citizen, who has passed the qualifying examination either from India or an equivalent examination from abroad and is desirous of joining an undergraduate medical course in any foreign medical institution on or after 15th March, 2002 shall approach the Council for issue of an Eligibility Certificate for that purpose.

Signature Not Verified

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HARI SHANKAR
Signing Date: 05.06.2024
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referred to as “the Eligibility Regulations”). He submits that “qualifying examination” is defined in Regulation 2(f) of the Eligibility Regulations as meaning “the examination to be qualified to become eligible for admission in MBBS course in India as prescribed in the Graduate Medical Regulations, 1997”.

22. If an Indian citizen desires admission to an MBBS course in India, as already noted, she, or he, has to clear one of the qualifying examinations envisaged in Regulation 4(2) of the GME Regulations. These examinations would also, therefore, constitute “qualifying examinations” for the purposes of the Eligibility Regulations, by virtue of Regulation 2(f) thereof.

23. Juxtaposing this understanding of the expression “qualifying examinations” into Regulation 3 of the Eligibility Regulations and applying it to the facts of the present case, Mr. T. Singhdev submits that, as the petitioner is an Indian citizen, she, before she joined the MD course with the DMSFI, was required to have passed one of the examinations envisaged in Regulation 4(4) of the GME Regulations or an equivalent examination from abroad. As she has done neither, Mr. T. Singhdev would submit that she was not eligible for admission to the MD course in Philippines at the time when she obtained such admission. In that view of the matter, he submits that the petitioner cannot claim a right to be issued an Eligibility Certificate for undertaking the FMGE to practice as a medical professional in India on the basis of the MD degree obtained by her from the DMSFI Philippines.



Submissions of Mr. Sudhir Naagar

24. Responding to Mr. T. Singhdev's submissions, Mr. Sudhir Naagar, learned Counsel for the petitioner, relies on Regulation 4(2)(c)⁶ of the GME Regulations, under which a "pre-professional/pre-medical examination with Physics, Chemistry and Biology/Bio-technology", undertaken "after passing either the higher secondary school examination, or the pre-university or an equivalent examination" and which includes "a practical test in Physics, Chemistry, Biology/Bio-technology and also English as a compulsory subject", is regarded as a qualifying examination to entitle a candidate to undertake the NEET for admission to an MBBS course in India.

25. In this context, he draws attention to clauses B and C of Public Notice dated 22 November 2023 issued by the NMC, which specifically contains clarifications with respect to Foreign Medical Graduates (FMGs) who have obtained a PMQ from Philippines and read thus:

"B- FMGs FROM PHILIPPINES

That with effect from 18.11.2021-i.e. with the publication FMGE Regulation, 2021, NMC de-recognises BS Course in Philippines. Hence those FMGs who were studying BS Course or had taken admission in BS Course at the time of publication of FMGL Regulation are not allowed.

⁶ 4(2) He/She has passed qualifying examination as under :-

(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;



However-FMGs having taken admission in MD Course on or before 18.11.2021 are eligible to complete the course and subsequently write FMG Examination in India. After qualifying FMGE, these FMGs are required to undergo one year of internship in order to compensate the deficiency in their training from parent foreign medical college followed by CRMI after obtaining provisional registration. (Since their course is of 48 months only unlike 54 months MBBS course in India).

In case of break as mentioned under Situation II & III of Point A above, then similar condition shall be applicable here

NOTE: THE DECISION TO INSIST ON AN ADDITIONAL YEARS OF CLERKSHIP IS BECAUSE THESE STUDENTS LACK PROPER PLANNED TRAINING AND PRACTICAL CLINICAL EXPOSURE FOR A LONGER PERIOD, IN THE BEST INTEREST OF CITIZENS OF THE COUNTRY.

C. ISSUE OF ELIGIBILITY CERTIFICATE (EC) TO FMGS/

Keeping in view the fact that several thousand Indian students who have already commenced their pre-medical education, i.e., B.S. course in / Philippines, or pre-medical/language courses in any other foreign countries and that/Eligibility Certificate is required to be granted on the criteria of age and marks in 10+2 as per Public Notice dated 14th September, 2018 issued by the erstwhile Medical Council of India and Order dated 27.09.2018 passed by the Hon'ble High Court of Delhi at New Delhi in WP(c)No.8091/2018 and connected matters, Indian Citizens/OCI who had not registered/appeared/qualified NEET-UG 2018 & 2019, were allowed to take admission in MBBS or equivalent medical course in a medical university outside the country in the academic year 2018-19 and 2019-20. However, such candidates are required to obtain/apply for an eligibility certificate from the Medical Council of India u/s 13(4B) of the IMC Act, 1956.

Such candidates should furnish their admission record in BS or any other pre-medical course/language course in the Foreign Countries with their application for an Eligibility Certificate alongwith details of travel including exit from India and entry back into India as well as entry / exit in that Foreign Country. The same may be accepted only on the basis of certified copies of passport wherein such details are duly recorded. It may be further clarified that, the present is a one-time exemption granted keeping in view the peculiar facts and circumstances that have arisen and all those who leave the Indian Shores for pursuing pre-medical/medical course



for the academic year 2018-19 & 2019-20 shall be exempted from the requirement of NEET-2018 & 2019 in terms of the amendment dated 01.03.2018 to the Screening Test Regulations, 2002 and Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulation, 2002."

26. Mr. Naagar submits that, in clauses B and C of the Public Notice dated 22 November 2023, the NMC has acknowledged that the BS is a pre-medical examination. He submits that the marksheet of the petitioner, consequent on undertaking the BS course, has been placed on record with the writ petition, and that a perusal thereof would reveal that the course includes Physics, Chemistry and Biology with English. The BS, therefore, he submits qualifies as a "pre-medical examination with physics, chemistry and biology", undertaken by the petitioner after passing the higher secondary school examination in Philippines. He also relies on the stipulation contained in the Public Notice dated 22 November 2023, to the effect that a FMG who has obtained admission to the MD course on or before 18 November 2021 is eligible to complete the course and write the FMGE, subject to having to undergo one year internship after qualifying the FMGE, before being entitled to practice as a medical professional.

27. Mr. Naagar also relies on an earlier Public Notice dated 25 March 2022, also issued by the NMC, paras 2, 3 and 4 of which read thus:

"2. It is observed that BS & MD course are two separate degrees in Philippines. BS Course cannot be equated/included with MBBS course. Therefore, after the publication of Gazette Notification dated 18.11.2021 i.e. NMC's FMGL Regulations 2021, the students who have already taken admission for any



foreign medical qualification/course which is not equivalent to the MBBS Course in India, cannot be treated as eligible qualification for registration to practice medicine in India. Whereas, the students who have taken admission in MD course in Philippines prior to FMGL Regulations 2021 can be considered subject to fulfilling other prevailing eligibility criteria for registration.

3. Bridging BS Course is a course of Bachelor of Science for candidates seeking to join courses in field of Science 85 Research in Philippines, The said course comprises of subjects of Biology similar to Class 11th & 12th in India. BS Course is the pre-medical course in Philippines, after the completion of which the candidates have to appear in the NMAT examination to seek admission in MD Course (Graduate/Primary Medical Course being equivalent to MBBS) which is of 4-year duration. The pattern is BS Course followed by MD Course, however, in the said BS Course, the candidates are not being taught pre-clinical subjects like Anatomy, Biochemistry, Biophysics, Microbiology etc., rather they are being taught subjects like Biology, Psychology etc. which is equivalent to Class 12th in India. Hence, BS Course is a basic degree course prior to the starting of Graduate/Primary Medical Course in reference with Indian Education. The same does not even qualify a candidate to be eligible for admission in MBBS course in India.

4 The Graduate Medical Education Regulations, 1997 prescribes that candidates mandatorily must qualify the NEET-UG Examination for becoming eligible for counselling to be considered for admission in MBBS course and that to appear in NEET-UG, it is pre-condition that the candidates must have studied in the last 2 years of his / her school education (Clans 11th & 12th) regular, simultaneous, co-terminus the subjects of Physics, Chemistry & Biology. Thus, a candidate who has already undergone the requisite studies in Class 11 & 12th in India and thereafter qualified the NEET-UG, being the pre-requisite for proceeding to a Foreign Medical Institute, shall not gain any further knowledge by undergoing the BS Course, which seems to be a mandatory course for obtaining admission to the Graduate/Primary Medical Course in Philippines. The BS Course in Philippines is a pre-requisite to appear in NMAT for admission in MD Course (Graduate/Primary Medical Course being equivalent to MBBS). Hence, the duration of the BS Course cannot be counted in the duration of the Graduate/Primary Medical Course in Philippines. Further, the regulations were not made/directed to any particular country but to be universally applicable for all FMGs, with sole objective of maintaining standard of education and quality of doctors in India.”



28. Mr. Naagar further submits that the petitioner is willing to undergo the one year internship as required by the Public Notices dated 25 March 2022 and 22 November 2023 issued by the NMC after undertaking the FMGE, before being entitled to practice as a medical professional.

Mr. Singhdev's submissions in reply

29. Responding to Mr. Naagar's reliance on Regulation 4(2)(c) of the GME Regulations, Mr. T. Singhdev seeks to juxtapose the said sub-regulation with Regulation 4(2)(a). He submits that an examination, in order to qualify as a "pre-medical examination", for the purposes of Regulation 4(2)(c), has to be undertaken "after passing either the higher secondary school examination, or the pre-university, or an equivalent examination". The BS examination undertaken by the petitioner could not qualify as a pre-medical examination for the purposes of Regulation 4(2)(c), as it was not undertaken after passing a higher secondary school examination or any equivalent examination. For this purpose, Mr. Singhdev relies on Regulation 4(2)(a), which refers to a "higher secondary examination.....which is equivalent to 10 +2 higher secondary examination, after a period of 12 years study". The secondary school examination cleared by the petitioner in 2010-2011, having not been preceded by 12 years' study, and not having been declared as equivalent to the 10+2 higher secondary examination, he submits, that the BS course cannot qualify as a pre-medical examination for the purposes of Regulation 4(2)(c).



30. Mr. Singhdev also relies on Regulation 8⁷ of the Eligibility Regulations, and submits that, as per Regulation 8, the NMC has, at the time of considering an application for issuance of an Eligibility Certificate, to verify various details, one of which is whether the candidate fulfills the Eligibility criteria for admission to an MBBS course in India as prescribed in the GME Regulations. Regulation 9⁸ clarifies that the Eligibility Certificate is to be issued only if, after such verification, the candidate is found to fulfill the Eligibility criterion.

31. In the context of these submissions, Mr. T. Singhdev seeks to place reliance on paras 2, 3, 11 to 15, 19 and 21 of the judgment of the Supreme Court in *Kaloji Narayana Rao University of Health Sciences v. Srikeerti Reddi Pingle*⁹, as well as the judgment of the Supreme Court in *Rohinish Pathak v. Medical Council of India*¹⁰ and of a learned Single Judge in *Iulha Malafeeva v. U.O.I.*¹¹.

⁷ 8. The Council shall consider the application for Eligibility Certificate and verify the following details as per the Regulations of the Council—

- (i) Whether the candidate fulfills the age criterion prescribed by the Council?
- (ii) Whether the candidate fulfills the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997, *i.e.*, minimum qualifying marks criteria in Physics, Chemistry, Biology and English, including relaxed criteria in case the candidate belongs to a reserved category?
- (iii) If the candidate belongs to SC/ST/OBC, whether he/she has produced a caste certificate from a Competent Authority?

⁸ 9. After verification, as required, if the candidate is found to fulfill the eligibility criteria, the Council shall issue an Eligibility Certificate in the prescribed format to the candidate certifying that he/she is eligible to join a medical institution outside India to obtain a primary medical qualification. The certificate shall indicate that on return after obtaining the foreign primary medical qualification, the candidate shall have to undergo a screening test, subject to fulfillment of the conditions prescribed in the Screening Test Regulations, 2002, and that passing this test shall only entitle him to provisional/permanent registration by the Medical Council of India or the State Medical Councils.

⁹ 2021 SCC OnLine SC 94

¹⁰ 2019 SCC OnLine SC 7324

¹¹ Order dated 24 February 2023 in WP (C) 11034/2020



32. Mr. Singhdev further submits that Public Notice dated 22 November 2023, issued by the NMC, on which Mr. Naagar places reliance, stands superseded by Public Notice dated 7 December 2023, Clauses 2 and 4 of which specifically deal with “issues related to recognition of BS course” and read thus:

“2. ISSUES RELATED TO RECOGNITION OF BS COURSE

- Students who were studying BS Course or had taken admission in BS course and were physically studying in Foreign Medical Institute at the time of publication of FMGL Regulation 2021 dated 18.11.2021 shall be governed by old Screening Test Regulation, 2002 however such students shall have to undergo additional one year of internship as per CRMI Regulation, 2021.
- This shall be one time exemption specific to these students only.

4. ISSUE OF ELIGIBILITY CERTIFICATE (EC) TO FMGs

- Keeping In view the fact that several thousand Indian students who have already commenced their pre-medical education, i.e., B.S. course in Philippines or pre-medical/language courses in any other foreign countries and that Eligibility Certificate is required to be granted on the criteria of age and marks in 10+2 as per Public Notice dated 14th September, 2018 issued by the erstwhile Medical Council of India and Order dated 27.09.2018 passed by the Hon'ble High Court of Delhi at New Delhi in WP(c)No.8091/2018 and connected matters, Indian Citizens/OCI who had not registered/appeared/qualified NEET-UG 2018 & 2019, were allowed to take admission in MBBS or equivalent medical course in a medical university outside the country in the academic year 2018-19 and 2019-20. However, such candidates are required to obtain/apply for an eligibility certificate from the Medical Council of India u/s 13(4B) of the IMC Act, 1956.
- Such candidates should furnish their admission record in BS or any other pre-medical course/language course in the Foreign Countries with their application for an Eligibility Certificate alongwith details of travel including



exit from India and entry back into India as well as entry / exit in that Foreign Country. The same may be accepted only on the basis of certified copies of passport wherein such details are duly recorded. It may be further clarified that, the present is a one-time exemption granted keeping in view the peculiar facts and circumstances that have arisen and all those who leave the Indian Shores for pursuing pre-medical/medical course for the academic year 2018-19 & 2019-20 shall be exempted from the requirement of NEET-2018 & 2019 in terms of the amendment dated 01.03.2018 to the Screening Test Regulations, 2002 and Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulation, 2002”

33. Mr. Singhdev submits that Clause 4 of the Public Notice dated 25 March 2022 recognises that BS is a pre-medical examination only in Philippines. It cannot, therefore, be regarded as a “pre-medical course” for the purposes of Regulation 4(2)(c) of the GME regulation.

34. Mr. Singhdev has also places reliance on Section 6 of the Medical Act 1959 of Philippines, which reads thus:

“6. **Minimum Required Course.**- Students seeking admission to medical course must have a bachelor/s degree in science or arts. The medical course leading to the degree of doctor of medicine shall be at least four years and shall consist of the following subjects. Anatomy Physiology Biochemistry and Nutrition Pharmacology Microbiology Parasitology Medicine and Therapeutics Pathology Gynecology Ophthalmology Otolaryngology, Rhinology and Laryngology Pediatrics Obstetrics Surgery Preventive Medicine and Public Health Legal Medicine, including jurisprudence. Medical Economics and Ethics. Provided, That the Board is hereby authorized or modify or add to the subjects listed above as the needs and demands of progress in the medical profession may require.”

Mr. Singhdev seeks to point out that, as per Section 6 of the Philippines Medical Act, a student who seeks admission to a medical



course need have only a bachelor degree in arts. This, he submits, would additionally indicate that a BS course cannot be equated to a pre-medical course for the purposes of Regulation 4(2)(c) of the GME Regulations. Mr. Singhdev also seeks to refer to the subjects undertaken by the petitioner in the BS course, as per the marksheet filed by the petitioner with her writ petition, to contend that it may not qualify the description of a “Higher Secondary Examination” for the purposes of Regulation 4(2)(c).

35. In conclusion, Mr. Singhdev cites, to support his submissions, the judgments of the Supreme Court in *Director, AIIMS v. Dr. Nikhil Tandon*¹², *Medical Council of India v. Indian Doctors from Russia Welfare Association*¹³ (paras 4 and 5) and *Sanjeev Gupta v. UOI*¹⁴, the judgment of the Division Bench of this Court in *Dr. Mahesh Prakash Shinde v. UOI*¹⁵ (paras 32 to 25) as well as the judgment of learned Single Judges of this Court in *Iulha Malafeeva*.

Submissions of Mr. Naagar in rejoinder

36. Arguing in rejoinder, Mr. Naagar cites the judgments in *Jishalakshi Embrandiri v. Medical Council of India*¹⁶ and of a Division Bench of High Court of Madras in *Ouwshitha Surendran v.*

¹² (1996) 7 SCC 741

¹³ (2002) 3 SCC 696

¹⁴ 2005 1 SCC 45

¹⁵ 2024 SCC OnLine Del 2287

¹⁶ 200 (8) SLR 746



*National Medical Commission*¹⁷ as well as paras 5, 9, 11, 19 and 21 of *Shambhavi Sharma v. NBE*¹⁸.

37. Mr. Naagar points out that, in *Jishalakshi Embrandiri*, this court had taken into account the fact that the petitioner had taken admission in the MBBS course abroad as per the eligibility conditions prevailing there. The entitlement of the petitioner to have enrolled in, and undertaken, the MS course from the DMSFI cannot, therefore, he submits, be assessed on the basis of whether, with the said qualifications, the petitioner could have secured admission to an MBBS course in India.

38. Mr. Naagar further submits, in fact, a student who has undergone a 10 + 2 course in India does not have to undergo the four year BS course in Philippines before joining the MS course, and is only required to undergo a two year BS course. This itself indicates that the four year BS course is in no way inferior to the 10 + 2 course in India. He relies, further, on the following FAQs put up by the Indian Embassy in Philippines on its website and on the answer thereto:

“Why do I need to do a BS course before joining the MD course?”

In Philippines the present education system for their nationals is 10 + 4 where the school education finishes after ten followed by a BS course for four years which is a degree course. After completion of 14 years they are admitted to MD course if he/she wishes to pursue medicine. An Indian student who has studied in India under 10+2 system therefore needs to do the BS course before enrolling for

¹⁷ 2024 (1) CTC 276

¹⁸ 2011 I AD (Delhi) 382

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MD. However, some additional credits for the BS course are given for +2 which the Indian student has done and the remaining credits of the BS course have to be obtained during the three semesters before he is granted a BS degree. There after he is eligible for MD course. In short an Indian student does a BS + MD course of 1.5-2 yrs approx and 4years respectively. The system is expected to ease out in the coming years as Philippines is switching over to 10+2 system.”

Submissions of Mr. Singhdev in surrejoinder

39. Mr. Singhdev, who was permitted to argue in surrejoinder, once again draws attention to Regulation 3 of the Eligibility Regulations, and emphasizes the words “or an equivalent examination from abroad” figuring therein. In the absence of any certificate of equivalence, declaring the BS examination as equivalent to the 10 + 2 examination in India, he submits, that the petitioner cannot be regarded as having been eligible to enrol in the MD course in Philippines, at the time she did so.

40. He also seeks to distinguish the judgments in *Jishalakshi Embrandiri*, *Ouwshitha Surendran* and *Shambhavi Sharma* on which Mr. Naagar placed reliance.

An additional aspect, noticed after judgment was reserved

41. While drafting the present judgment, this Court noticed that Regulation 4(2) of the Screening Test Regulations seemed to indicate that one of the pre-requisites for appearing in the Screening Test was possession, by the candidate, of an Eligibility Certificate which she, or he, “*had obtained*” as per the Eligibility Regulations. As this threw up



the issue of whether the candidate could at all apply for an Eligibility Certificate *after* having obtained the Primary Medical Qualification from the foreign medical institution, both learned Counsel were briefly heard on this aspect on 3 June 2024. After hearing learned Counsel, the following order was passed on the said date:

“1. While the final judgment was in preparation, this Court came across Regulation 4(2) of the Screen Test Regulations which seemed to indicate that obtaining of Eligibility Certificate is a requirement to be fulfilled prior to obtaining the admission to the undergraduate course abroad and cannot be deferred to a later stage.

2. As no detailed arguments on this were heard, learned counsel have been briefly heard on this point.

3. Mr. Naagar, learned counsel for the petitioner, submits that this issue is no longer *res integra*, in view of the judgment of the learned Single Judge of this Court in *Shambhavi Sharma* which has been followed by another learned Single Judge in *Pawan Kumar Gupta v. Medical Council of India*¹⁹, which holds that, as the relevance of the Eligibility Certificate is only at the stage of undertaking the FMGE, a candidate can apply for obtaining the Eligibility Certificate even after obtaining the undergraduate medical qualification from abroad.

4. Mr. Singhdev, learned Counsel for the NMC submits that, though the impugned order has not been passed on this ground, the legal position is that the Eligibility Certificate has to be obtained prior to seeking admission to the undergraduate programme abroad and that this is one of the conditions which would determine the entitlement of the candidate to practice medicine in India. He relies on para 6(b) of the judgment of the Supreme Court in *Indian Doctors from Russia Welfare Association* and the Division Bench of this Court in *Ishaan Kaul v Medical Council of India*²⁰ and in *Rohinish Pathak*, against which the SLP was dismissed by the Supreme Court.

5. As this aspect has been clarified just today, the judgment in this matter would be pronounced tomorrow.”

¹⁹ 2012 SCC OnLine Del 858

²⁰ AIR 2010 Del 112



Analysis

42. No occasion arises for this Court to enter into any of the aspects which were argued, for the simple reason that the right to obtain an Eligibility Certificate is available only prior to undertaking the medical course from a Foreign Medical Institution and cannot be deferred to any later stage and, in the absence of such an Eligibility Certificate, a candidate cannot undertake the FMGE.

Section 13(4B) of the IMC Act

43. Learned Counsel for both sides are in agreement that Section 13 of the IMC Act applies to the facts of the present case. Sub-section (4A)²¹ of Section 13 requires the candidate, who is a citizen of India and obtains a PMQ from a foreign medical institution, to qualify the FMGE in order to be enrolled on the Medical Register maintained by the State Medical Council or the Indian Medical Register. Sub-section (4B)²² further stipulates that such a citizen of India shall not be eligible to get admission to obtain a PMQ granted by any medical

²¹ (4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognized for enrolment as 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 and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

²² (4B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognized medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.



institution in a foreign country *without obtaining an Eligibility Certificate issued to him by the MCI*. More importantly, for our purpose, Section 13(4B) goes on to stipulate that, “*in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A)*”.

44. In view of this concluding caveat in Section 13(4B), it is clear that, as the petitioner is a citizen of India, and had obtained the MD qualification from the DMSFI without obtaining the Eligibility Certificate from the MCI, she is not eligible to appear in the FMGE. Section 13(4B) does not, expressly or impliedly, envisage obtaining of the Eligibility Certificate *after* obtaining the PMQ from the foreign medical institution.

45. Allowing the petitioner to obtain the Eligibility Certificate from the MCI/NMC at this stage, after she has already obtained the MD qualification from the DMSFI would, therefore, do violence to Section 13(4B).

Regulation 4(2) of the Screening Test Regulations

46. Regulation 4(2) of the Screening Test Regulations, also uses the expression “had” which refers to a period prior in point of time.

47. To my mind without rewriting the statute, it is impossible to read Regulation 4(2) of the Screening Test Regulations as enabling a



candidate to obtain an Eligibility Certificate *after* obtaining the PMQ from abroad.

48. Regulation 4 sets out the eligibility criteria for a person to be eligible to appear in the FMGE. Sub-regulation (1) of Regulation 4 requires the person to be a citizen of India and to possess a PMQ, confirmed by the Indian Embassy to be a recognized qualification for enrolment as a medical practitioner in the country from which the PMQ was obtained. Sub-regulation (2), however, additionally envisages that the person “*had obtained*” the Eligibility Certificate from the MCI, *as per the Eligibility Regulations*. Thus, *prior obtaining of the Eligibility Certificate in terms of the Eligibility Regulations* is a *sine qua non* for a person who has, thereafter obtained the PMQ from a foreign country, to appear in the FMGE.

49. The Eligibility Regulations are clear and categorical. They envisage obtaining of an Eligibility Certificate only prior to joining the medical course from the foreign institutions. Regulation 4 of the Screening Test Regulations, read with sub-Regulation (2) thereunder, clearly stipulates that “no person shall be allowed to appear in the screening test unless “*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’*”. The Eligibility Regulations, clearly, envisage obtaining of an Eligibility Certificate only *prior to taking admission in the medical course abroad, and not thereafter*.



They certainly do not permit obtaining of the Eligibility Certificate *after the course is undertaken and the PMQ obtained.*

50. In fact, there is no provision in any Statute, Rule or Regulation which permits application for an Eligibility Certificate after the candidate has already obtained a PMQ from a Foreign Medical Institution. The Eligibility Certificate has to be obtained prior to joining the medical course abroad. If it is not obtained at that stage, it cannot be obtained later. Regulation 4(2) of the Screening Test Regulations do not permit a candidate to apply for an Eligibility Certificate after having obtained the PMQ from the foreign medical institution.

51. Though there are judicial authorities, on this issue, both ways, the binding legal position is as stated above. If one were to advert, in decreasing order of precedential preference, the decisions of the Supreme Court, of Division Benches of this Court, and of Single Judges of this Court, the following position emerges.

51.1. *Indian Doctors from Russia Welfare Association*

51.1.1. In *Indian Doctors from Russia Welfare Association*, the Supreme Court was concerned with the plight of persons who had obtained medical qualifications from colleges in the erstwhile USSR and, after the disintegration of the USSR, faced difficulties in obtaining admission to recognised colleges. Further difficulties, in the matter of recognition of the qualifications obtained from such colleges



by the MCI in India, so as to enable such students to practice medicine here, also arose. The Supreme Court called upon the Government of India to formulate an appropriate policy, keeping in mind the human problem that had arisen. In response, Section 13 of the IMC Act was amended in 2001, to cover such situations. In this context, the Supreme Court noted, in paras 4 to 6 of the report, thus:

“4. Now, Section 13 of the Indian Medical Council Act, 1956 (hereinafter referred to as “the Act”) has been amended by Act 34 of 2001 which would cover situations as arising in the present cases. The Regulations for conduct of the screening test and for issue of Eligibility Certificate by MCI to the students proceeding abroad for studies in Medicine have been approved by the Government of India and sent to MCI. MCI has sent the same on 18-2-2002 to the Government of India Press for publication in the Gazette and those Regulations, in brief, provide as follows:

(i) An Indian citizen possessing a primary medical qualification awarded by any of the medical institutions outside India and desirous of getting provisional or permanent registration with the Medical Council of India or any State Medical Council on or after 15-3-2002 shall have to qualify a screening test conducted by the prescribed authority for the purpose of their registration in India. A person seeking permanent registration shall not have to qualify the screening test if he or she had already qualified the same before getting his or her provisional registration.

(ii) The primary medical qualification possessed by the Indian citizen should be a recognised medical qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated.

(iii) *Any Indian citizen who is desirous of taking admission in an undergraduate medical course abroad on or after 15-3-2002 shall have to obtain an Eligibility Certificate from MCI stating that he or she fulfils the minimum eligibility criteria laid down by MCI for admission in MBBS course in India. He shall also have to produce the same at the time of appearing in the screening test, after completion of his degree abroad, for*



the purpose of obtaining registration in India.

5. Under the provisions of the Act a person has to successfully complete compulsory internship of one year after getting provisional registration and all persons who applied for provisional registration and have to do the internship on or after 15-3-2001 will be required to qualify the screening test as per the provisions of the Screening Test Regulations, 2002, as they would become eligible for permanent registration on or after 15-3-2002, that is, after successful completion of one year internship. However, the Government noticed that there are a number of persons who have applied to MCI for grant of provisional registration after completion of their degree abroad prior to 15-3-2001 and have not been granted provisional registration by MCI for various reasons, such persons fall into the following categories:

- (a) those who did not undergo the complete duration of six years of the medicine course from institutes recognised by MCI;
- (b) those who did not fulfil the minimum eligibility criteria for joining medical course laid down by MCI at the time of their admission in the medical institutions abroad, particularly in the erstwhile States of USSR; and
- (c) those who came back with medical degrees which are not recognised by MCI.

6. In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15-3-2001, the following guidelines are placed before this Court by the Government of India:

(A) The case of all persons who applied for registration to MCI prior to 15-3-2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:

- (i) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of



shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in a recognised institution plus the internship, would be seven years, which is the requirement even otherwise.

(ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.

(B) All students who have taken admission abroad prior to 15-3-2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the screening test even if they also come in the categories of circumstances contained in (A)(ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15-3-2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15-3-2002. *From 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.*

(C) The categories of students not covered in (A)(i) and (ii) above and whose entire period of study has been in a medical college not recognised by MCI, will be allowed to appear in the screening test for the purpose of their registration provided they fulfil all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be a qualification recognised for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling



the minimum eligibility qualification laid down by MCI for taking admission in an undergraduate medical course in India. They shall not be entitled to any relaxation.”

(Emphasis supplied)

51.1.2. Thus, in para 4(iii) of the decision, the Supreme Court held that, as per the Eligibility Regulations, any Indian citizen, desirous of taking admission in an undergraduate medical course abroad on or after 15 March 2002, has necessarily to obtain an Eligibility Certificate from MCI, *and that the said certificate, obtained prior to taking admission in the medical course abroad, would have to be produced at the time of appearing in the screening test, undertaken after obtaining the PMQ from abroad, for obtaining registration in India.* Para 4(iii), therefore, clearly holds that the Eligibility Certificate, which is to be produced by the candidate for appearing in the FMGE and subsequent registration in India, is the Eligibility Certificate obtained prior to joining the medical course abroad. This clearly militates against obtaining their Eligibility Certificate after having completed the medical course abroad, resulting in the award of the PMQ. To repeat, para 4 (iii) of the decision requires the Eligibility Certificate *to be obtained* by the candidate prior to undertaking the medical course abroad, and *produced* by the candidate before undergoing the FMGE and subsequent registration in India.

51.1.3. In para 7 of the report, the Supreme Court approved the guidelines placed before it by the Central Government, in exercise of the jurisdiction vested in it by Article 142 of the Constitution of India, and went on to hold that these guidelines would be applicable to all



such persons similarly situated, irrespective of whether they were parties before the Supreme Court, or not. In the concluding sentence of para 7, the Supreme Court directed that future cases would be covered by the revised Regulations framed by the MCI as approved by the government. In the concluding sentence in para 6(B) of the judgment, the Supreme Court directed that, “*from 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine*”. Thus, the Supreme Court reiterated that the Eligibility Certificate was to be obtained by the student before joining the medical course abroad.

51.1.4. The prayer of the petitioner in the present writ petition essentially reverses this scheme of things. The petitioner never obtained the Eligibility Certificate before joining the MD course in DMSFI. Having failed to obtain the Eligibility Certificate at that stage, the petitioner now seeks, after having obtained the MD qualification from the DMSFI, to obtain the Eligibility Certificate. The cart is, therefore, sought to be placed before the proverbial horse. To my mind, this is not permissible.

51.2. *Ishan Kaul*

51.2.1. This judgment, rendered by a Division Bench of this Court and authored by Sanjiv Khanna, J. (as he then was) also dealt, specifically, with Section 13(4A) and (4B) of the IMC Act, as is noted in the opening para 2 of the decision. Adverting to the said



provisions, which were introduced in the IMC Act by the Indian Medical Council (Amendment) Act, 2001, the Division Bench of this Court observed, in para 10 of the report, thus:

“10. The amendments introduced statutory basis and requirement that an Indian citizen who has obtained medical qualification from outside India will be granted registration by MCI to practice modern scientific medicine in India provided (a) *he had obtained eligibility certificate from MCI that he was eligible to take admission in any foreign country to study medicine* and (b) he has cleared the post degree screen test prescribed.”

(Emphasis supplied)

51.2.2. Para 20 of the report clarifies the legal position beyond any pale of doubt:

“20. In view of the above reasoning, it is held that a citizen of India is entitled to study and possess any primary medical qualification in any institute mentioned in Regulation 4 of Screening Test Regulations. Such institute/university need not be recognized and authorized by MCI. A candidate must also satisfy the eligibility requirements mentioned in the Eligibility Regulations and obtain an eligibility certificate from MCI before he proceeds abroad to take admission in a foreign university/college for possessing primary medical qualification. Screening Test Regulations have to be complied with. The appeal and the writ petition are accordingly allowed to the extent stated above. No costs.”

(Emphasis supplied)

51.2.3. *The Eligibility Certificate has, therefore, necessarily to be obtained by the student before joining the medical course abroad. If she, or he, fails to do so, the chance is lost. The decisions in **Indian Doctors from Russia Medical Association** and **Ishan Kaul** do not permit, to the student, a second bite at the cherry, to apply for the*



Eligibility Certificate after undertaking the medical course abroad and obtaining the PMQ as a consequence.

51.3. *Rohinish Pathak*

In a similar vein, paras 8 and 9 of the judgment in *Rohinish Pathak*, also rendered by a Division Bench of this Court, hold as under:

“8. The requirements of these Regulations, read together, are that an overseas qualified candidate could be permitted to practice medicine in India only if he/she (a) had qualified to be admitted to an MBBS degree course in India, (b) *obtained an eligibility certificate under the ERR prior to taking admission in a foreign medical institution*, and (c) cleared the screening test under the STR after abstaining his foreign qualification. The provisions of the STR and ERR have been noticed in detail by the Supreme Court in *Sanjeev Gupta v. U.O.I.*²³ and *Yash Ahuja v. Medical Council of India*²⁴.

9. 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.”

(Emphasis supplied)

52. The petitioner, therefore, does not even have a right to apply for an Eligibility Certificate, not having obtained an Eligibility Certificate before joining the MD Course in the DMSFI.

²³ (2005) 1 SCC 45

²⁴ (2009) 10 SCC 313



53. Mr. Naagar, learned counsel for the petitioner has also not been able to draw my attention to any provision which entitles the petitioner to apply for an Eligibility Certificate after having obtained the MD qualification from the DMSFI and before undertaking the FMGE in India. He, however, relies on paras 5, 9, 11, 19 and 21 of the judgment of a learned Single Judge of this Court in *Shambhavi Sharma*, which has been followed in paras 13 and 14 of a Co-ordinate Bench in *Pawan Kumar Gupta*.

54. It is true that *Shambhavi Sharma* and *Pawan Kumar Gupta* hold that it makes no difference whether the Eligibility Certificate is applied for, before joining the foreign medical institution or after obtaining the PMQ from the said institution. Judicial discipline, however, require me to follow the precedents in *Indian Doctors from Russia Welfare Association*, rendered by the Supreme Court, and in *Ishan Kaul* and *Rohinish Pathak*, rendered by the Division Bench of this Court, in preference to the decisions in *Shambhavi Sharma* and *Pawan Kumar Gupta*. The Special Leave Petition preferred against the decision in *Rohinish Pathak* was also dismissed by the Supreme Court as devoid of merit.

55. Moreover, a reading of the decisions in *Shambhavi Sharma* and *Pawan Kumar Gupta* reveal that neither Bench was informed of *Indian Doctors from Russia Welfare Association* or of *Ishan Kaul*, though both were rendered prior in point of time.

A caveat, before parting



56. I am bound by the judgment of the Supreme Court in *Indian Doctors from Russia Welfare Association* and the decisions of the Division Bench of this Court in *Ishan Kaul* and *Shambhavi Sharma*, as well as the statutory dictate contained in Section 13(4B) of the IMC Act, all of which envisage obtaining of the Eligibility Certificate before joining the medical course abroad, and stipulate it as a pre-condition for the candidate to be eligible to appear in the FMGE for practicing in India as a medical professional. I have, therefore, reluctantly had to hold that the Eligibility Certificate cannot be obtained *after* the candidate has obtained the PMQ from abroad.

57. At the same time, it appears that the NMC has been granting Eligibility Certificates to students who did not obtain such certificates before joining the medical course abroad and had applied for the Eligibility Certificate after obtaining the PMQ from the foreign institution, provided, according to the NMC, they were eligible for having been issue the Eligibility Certificate before they joined the medical course abroad. One may well imagine the plight of a student, such as the petitioner, who was educated entirely in Philippines, and who obtained her MD degree as per the law applicable in Philippines, being told, on returning to India and applying for an Eligibility Certificate to attempt the FMGE, that it is too late. If the NMC is, therefore, entertaining the request of such a student for grant of Eligibility Certificate on merits, it is a wholesome dispensation, but, unfortunately, is contrary to Section 13(4B) of the IMC Act and Regulation 4(2) of the Screening Test Regulations. As a court of law,



I find it difficult to affix my judicial seal of approval to this course of action.

58. The executive may, however, be well advised to consider whether the IMC Act should be amended, or suitable changes introduced in the Screening Test Regulations particularly in Regulation 4 thereof, as would permit issuance of an Eligibility Certificate to a student who has obtained the PMQ from abroad without, in the first instance, having been issued an Eligibility Certificate before joining the foreign medical course, and who is otherwise found fulfilling the requirements for grant of Eligibility Certificate.

Conclusion

59. Following the above discussion, as the petitioner never applied for the Eligibility Certificate before joining the MD course in the DMSFI, and in view of Section 13(4B) of the IMC Act and Regulation 4(2) of the Screening Test Regulations, read with the judgments in *Indian Doctors from Russia Welfare Association, Ishan Kaul* and *Rohinish Pathak*, I am constrained to hold that the petitioner was required, in law, to obtain the Eligibility Certificate before joining the MD course in DMSFI and, having not done so, is *ipso facto* ineligible to appear in the FMGE or register as a medical practitioner in India.



60. In view of the above, I do not deem it necessary to enter into any other submission advanced at the bar.

61. The writ petition is accordingly dismissed with no orders as to costs.

C.HARI SHANKAR, J

JUNE 4, 2024

rb/dsn/yg

Click here to check corrigendum, if any