

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 21.10.2021

Pronouncing orders on : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

**W.P.No.12782 of 2021
and W.M.P.Nos.13576 & 13578 of 2021**

Mrs.Ouwshitha Surendran

.. Petitioner

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

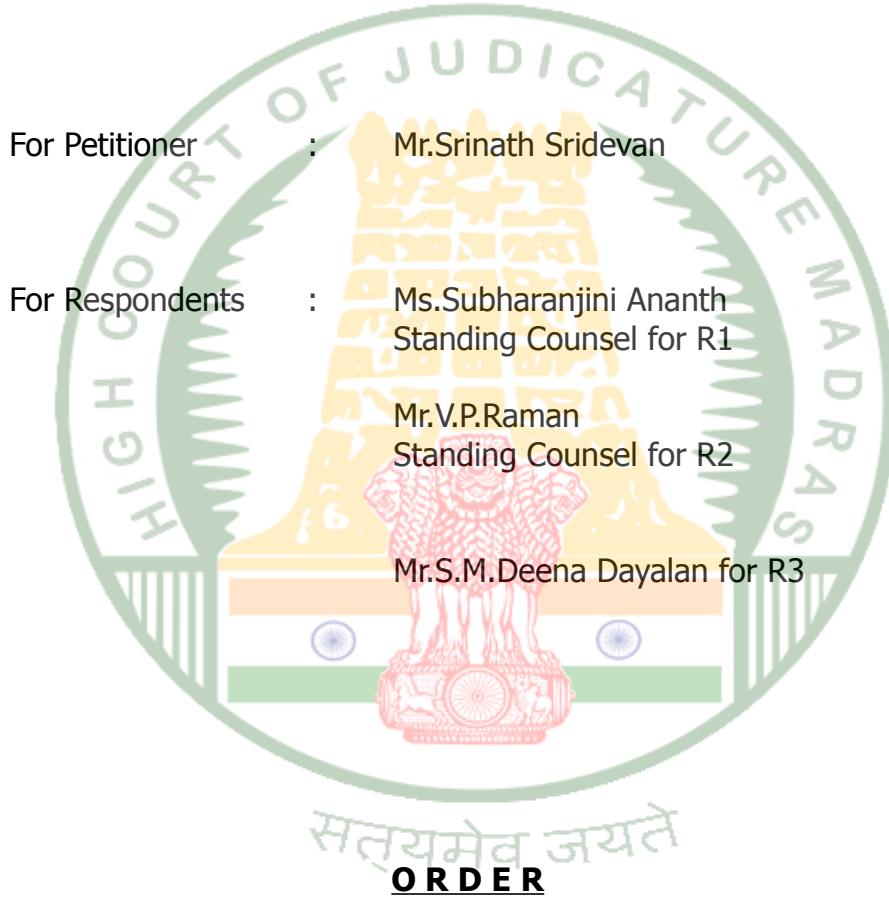
2 National Board of Examinations
Rep. by its Executive Director,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road)
New Delhi 110 029.

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

.. Respondents

(Respondent 3 is impleaded as per order made in W.M.P.No.15694 of 2021 in W.P.No.12782 of 2021 dated 05.08.2021)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the communication of the 1st respondent R.15012/03/2021-Regn/008931, dated 14.06.2021 and quash the same and consequently, directing the 1st respondent to issue the Eligibility Certificate to the petitioner in tune with the evolving knowledge systems in the world (such IELTS test for English).



This Writ Petition has been filed challenging the impugned communication dated 14.06.2021 issued by the 1st Respondent wherein the request made by the Petitioner for issuance of eligibility certificate was rejected by the 1st Respondent.

2. When the Writ Petition was taken up for admission on 15.06.2021, and

interim orders were passed permitting the Petitioner to write the Foreign Medical Graduate

Examination (hereinafter referred as FMG examination), pending disposal of the Writ Petition, this Court has dealt with the facts of the case and the issue involved in this Writ Petition and hence it will be more appropriate to extract the entire order hereunder:

1. The petitioner is an overseas citizen of India. She has completed her education in the Central Board of Secondary School Education in India till her Secondary School Education i.e., Class X from Bhavan's Gandhi Vidyashram, Kodaikanal, Tamilnadu. On completion of her Class X, her family moved to Sri Lanka. So, to continue her Higher Secondary Education, she chose Pearson Edexcel GCE A-Level Board of Examinations curriculum since it is closest to Indian and International level of education. Thereafter, she completed her Bachelor of Medicine and Bachelor of Surgery in Sichuan University, China and obtained MBBS degree.

1.1. The petitioner completed her education only in the English Medium. She has obtained a score of 7.5 out of 9 in International English Language Testing System (IELTS) issued by the British Council. She has also obtained her equivalence certificate from the Association of Indian Universities (hereinafter referred to as 'AIU') for her GCE A-Level Examination from Pearson Edexcel.

1.2. The Foreign Medical Graduate Examination (hereinafter referred to as 'Examination') is conducted by the second respondent. The application form for said Examination involves submission of Eligibility Certificate issued by the first respondent and Foreign Medical Qualification Certificate, attested by Indian Embassy among other documents. Hence, the petitioner applied to the first respondent with all certificates and required documents for the Eligibility Certificate on 21.01.2021. Thereafter, when applications for the said Examination opened, the petitioner applied to the second respondent for the Examination on 05.05.2021.

the first respondent vide e-mail, wherein, it was stated that her application for Eligibility Certificate was rejected for the reason that she did not study English as a subject in her Higher Secondary Education. Therefore, she made representation dated 10.05.2021 to the first respondent in this regard, however, the same was not considered. Hence, she filed W.P.No.12558 of 2021 before this Court and the same was disposed of vide order dated 10.06.2021 with a following directions:

"4. In view of the said submission, the 1st respondent is directed to consider the representation submitted by the writ petitioner on 10.05.2021 and pass orders and communicate the same to the writ petitioner on or before 14.06.2021 and in the event of considering the case of the writ petitioner by the first respondent, the second respondent shall permit the petitioner to appear for the said examination, which is scheduled to be conducted on 18.06.2021.

5. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed."

1.4. Subsequently, the first respondent vide order dated 14.06.2021, rejected the petitioner's representation by stating as follows:

"I am directed to refer to your representation dated 10.05.2021 and to say that Hon'ble High Court of Judicature at Madras vide its order dated 10.06.2021 has directed that the representation of petitioner dated 10.05.2021 may be considered.

2. In this connection, it is to inform you that your representation dated 10.05.2021 has been examined in this Commission and no evidence has been found to corroborate that you have studied English as a regular subject in class 11th and 12th, which is an essential requirement for taking admission into MBBS."

Aggrieved by the rejection order issued by the first respondent, the petitioner has come before this Court with the present writ petition.

2. The learned counsel for the petitioner would submit that by Letter dated 13.07.2011, the AIU has taken the following decision with regard to the issuance of Equivalence Certificates to the students who have passed their GCE A - Level Examination from British Examining Bodies:

"The candidate intending to pursue Professional Degree programmes are required

English.

However, keeping in mind that under the British system English is not compulsory to be taught at Advanced Level. The appropriate Authorities of AIU in their Meeting held with regard to the subject of English took the following decision:

"5 (Five) passes at GCE O level/GCSE/IGCSE and 2(Two) / 3 (Three) passes at GCE Advanced level of the approved British Examining Bodies have been recognized by AIU as equivalent to +2 stage qualification of an Indian Board, giving access to the Bachelor's Degree programmes of Indian Universities.

The candidate intending to join Medical/Engineering Degree programmes who have obtained at Advanced Level passes in Physics, Chemistry and Biology/Mathematics, plus AS Level English from British system will be eligible for admission to professional courses provided the candidate having passed 12 Years Senior Secondary Examination from an Indian Board with English as a subject are also exempted from appearing English Language Test seeking admission to higher courses at British Universities and/or employment. ""

3. The learned counsel for the petitioner would submit that in view of the aforesaid decision taken by AIU, the first respondent has to consider the petitioner's application for Eligibility Certificate. The rejection order issued by the first respondent is not consistent with the decision taken by AIU. He would also submit that eligibility of the petitioner would be decided only at the disposal stage of the present writ petition, so the petitioner may be permitted to write the Examination which is scheduled to be held on 18.06.2021. He would further submit that in the cases of similar nature, several orders have been passed by the High Courts permitting the petitioner(s) therein to write the Foreign Medical Graduate Examination. Further, in Paragraph No.30 of the affidavit, the petitioner undertakes that if she is permitted to write the Examination, she will not seek any equities on the basis of permission to write the Examination.

4. Ms. Shubharanjani Ananth, learned counsel takes notice for the first respondent and Mr. V.P. Raman, learned Senior counsel takes notice for the second respondent.

5. The learned counsel appearing for the first respondent would submit that the first respondent has rejected the petitioner's application in the light of the

rules/regulations prescribed under (i) *Medical Institution Regulations, 2002* (ii) *Regulations on Graduate Medical Education* and (iii) *National Eligibility Cum Entrance Test (UG) under Chapter 4 Eligibility and Qualification Code - 7.*

6. *The learned Senior counsel appearing for the second respondent would submit that the Examination is conducted by the second respondent. Due to the rejection order issued by the first respondent, the second respondent is not permitting the petitioner to write the Examination. If the first respondent approved the petitioner's application for Eligibility Certificate, the second respondent will permit the petitioner to write the Examination.*

7. *Heard the learned counsel on both sides. The submissions made by the counsel on both sides with respect to merits of the case will be considered at the time of disposal of this writ petition.*

8. *Considering the facts narrated above and also in the light of the decision taken by AIU vide letter dated 13.07.2011, this Court is inclined to grant an order of interim direction only for protecting the interest of the petitioner. Accordingly, there shall be an order of interim direction to the second respondent to permit the petitioner to write the Examination which is scheduled to be held on 18.06.2021. It is made clear that the second respondent shall not publish the results of the petitioner until further orders are passed by this Court. It is also made clear that in view of the undertaking in Paragraph No.30 of the affidavit, the petitioner will not seek any equities on the basis of permission to write the Examination.*

9. *It is brought to the notice of this Court by the learned counsel appearing for the first respondent that the Association of Indian Universities was not impleaded as a party in the present writ petition. Therefore, the petitioner is directed to implead the Association of Indian University as a party in this petition.*

10. *The learned counsels appearing for the respondents 1 & 2 respectively are directed to file the counter affidavit in the next date of hearing.*

11. *List the matter after three weeks.*

3. The 1st Respondent has filed a lengthy counter affidavit and the relevant

11. It is submitted that the Eligibility Requirement For Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 under Regulation 8 provides that the answering respondent shall consider the application for issuing an Eligibility Certificate only if the candidate fulfils the Eligibility Criteria for admission to MBBS course in India, i.e., minimum qualifying marks criteria in Physics, Chemistry, Biology Biotechnology & English, as prescribed in the Graduate Medical Education Regulations, 1997. Regulation 2(f) and Regulation 3 of the Eligibility Requirement For Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 provide that a person desirous of joining an undergraduate medical course must fulfil the requisite criteria of qualifying the examination as stipulated in the Graduate Medical Education Regulations, 1997 i.e. Senior Secondary Examination (Class 11 & 12) either from India or an equivalent examination from abroad.

12. It is respectfully submitted that the present writ petition is not maintainable

and deserves to be dismissed at the outset since a candidate aspiring for admission in an undergraduate medical course in a Foreign Medical Institution must have qualified Senior Secondary Examination (Class 11th & 12th), from India or obtained an equivalent examination from abroad but must fulfil the Eligibility Criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997. The same includes undergoing regular, co-

terminus / simultaneous teaching and training in the subjects of Physics, Chemistry and Biology / Biotechnology with practicals alongwith English in his/her Senior Secondary Education (Class 11th & 12th) for a period of two years and also obtaining the requisite minimum qualifying marks in Physics, Chemistry, Biology / Biotechnology & English individually as well as taken together, as has been prescribed, which the Petitioner has not undergone.

34. It is thus submitted that after the date of 15.03.2002, any candidate, prior to taking admission in any foreign medical institution has to approach the MCI for the purpose of procuring an Eligibility Certificate and upon return after completing the said foreign medical course had to qualify the Screening Test. It is only after qualifying the Screening Test that the said candidate could seek registration for the purpose of practising medicine in the country.

38. It is therefore mandatory that each student should be enrolled for a period of two years and each student must undergo regular, co-terminus / simultaneous teaching and training in the subjects of Physics, Chemistry and Biology with practicals alongwith English in his/her Higher Secondary Education (10+2).

40. It is submitted that the Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 under Regulation 8 provides that the Council shall consider the application for issuing an Eligibility Certificate only if the candidate fulfills the required criteria including the age criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997. The relevant

portion of Eligibility Requirement For Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations,2002 is reproduced as under:

..

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 fulfils 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.

87. *It is respectfully reiterated that the present writ petition is not maintainable and deserves to be dismissed at the outset since a candidate aspiring for being a registered medical practitioner in India must have qualified Senior Secondary Examination (Class 11th & 12th), from India or obtained an equivalent examination from abroad but must fulfill the Eligibility Criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997. The same includes undergoing regular, co-terminus / simultaneous teaching and training in the subjects of Physics, Chemistry and Biology / Biotechnology with practicals along with English in his/her Senior Secondary Education (Class 11th & 12th) for a period of two years and also obtaining the requisite minimum qualifying marks in Physics, Chemistry, Biology /*

Biotechnology & English individually as well as taken together, as has been prescribed, which the Petitioner has not undergone. Thus, the Petitioner had not undergone regular, continuous and co-terminus / simultaneous teaching and training in the subject of English.

88. *It is therefore, humbly submitted that in this view of the matter and the legal position as laid down by the Hon'ble Apex Court, it is most respectfully TOT FI Submitted that the prayer and relief sought in the present writ petition, in the most respectful submission of the answering respondent, being contrary to the statutory regulations and the various judgements of the Hon'ble Courts as submitted herein above would not be maintainable and the writ petition would deserve to be rejected. The answering respondent prays accordingly.*

4. The 3rd Respondent has also filed a counter affidavit. The 3rd Respondent is the body which grants the equivalence certificate and the basis on which such a certificate is granted, has been explained in the counter affidavit.

5. Heard Mr.Srinath Sridevan, learned counsel for the petitioner, Mrs.Shubharanjini Ananth, learned Standing Counsel for the 1st respondent, Mr.V.P.Raman, learned Standing Counsel for the 2nd respondent and Mrs.S.M.Deenadayalan, learned counsel appearing on behalf of the 3rd respondent.

6. The main issue that is involved in the present Writ Petition is as to whether the Petitioner has fulfilled the eligibility criteria for admission to MBBS course in India as

prescribed in the Graduate Medical Education Regulations, 1997. (Hereinafter referred as Regulations). The relevant regulation which deals with the eligibility requirement is extracted hereunder:

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

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

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(b) The intermediate examination in science of an Indian University/Board or other recognised examining body with 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 recognized university, with Physics, chemistry and Biology/Bio-technology including a practical test in three 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.

7. It will also be relevant to take note of the Foreign Medical Institution Regulations, 2002 and the Screening Test Regulations, 2002 for the purpose of understanding the scope and importance given to fulfil the eligibility criteria.

8. The relevant Regulation under the Foreign Medical Institutions Regulations, 2002 are extracted hereunder.

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 fulfils 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.

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 **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 fulfilment 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.

10. In case the candidate does not fulfil any of the qualifying criteria the Council may reject his application for issue of Eligibility Certificate giving the reasons therefor.

9. The relevant portions in the Screening Test Regulations, 2002 is also reproduced hereunder:

2. Definitions. In these Regulations, unless the context otherwiserequires -

- (f) "Primary Medical qualification" means a medical qualificationawarded by any medical institution outside India which is arecognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India;
- (h) "qualifying examination" means the examination to be qualified to become eligible for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations,1997;

3. An Indian citizen possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or permanent registration with the Medical Council of India or any State Medical Council on or after 15.03.2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of section 13oftheAct:

Provided that a person seeking permanent registration shall not have to qualify the screening test if he/she had already qualified the same before getting his/her provisional registration.

4. Eligibility Criteria:

No person shall be allowed to appear in the screening test unless:

1....

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."

10. Keeping the above regulations in mind, this court has to give a finding as to whether the Petitioner satisfies the requirements provided in the relevant regulations.

11. It is an admitted case that the Petitioner comes under the Overseas Citizens of India (OCI) Category. For the present academic year, viz., 2021-2022, a stand has been taken by the UOI that these candidates will be treated on par with the Indian Citizens and they will be considered under the general category.

12. It is an admitted case that the Petitioner studied in India till her Secondary School Education and thereafter, moved to Sri Lanka and continued her Higher Secondary Education. The curriculum that was undergone by the Petitioner was the closest to the Indian and international level of education. After completing the higher secondary education, the Petitioner completed her MBBS degree from a University in China.

13. It is also an admitted case that while undergoing higher secondary

education, the group chosen by the petitioner consisted of Physics, Chemistry, Biology and Mathematics and admittedly English was not taught as a separate subject even though the medium of instruction was only in English. The Petitioner in order to substantiate her knowledge in English also relies upon the score secured by her in the International English Language Tests (IELTS) and the petitioner has secured a score of 7.5 out of 9. The Petitioner has also obtained an Equivalence Certificate from the 3rd Respondent and by virtue of the same, she claims that the higher secondary education she underwent at Sri Lanka is equal to the 12th Senior School Certificate of Central Board of Secondary Education.

14. The relevant Regulations, viz., the Foreign Medical Institution Regulations and the Screening Test Regulations, 2002, makes it very clear that the candidate should fulfill the eligibility criteria for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997. If in case, the candidate does not fulfil the qualifying criteria, it is left open to the 1st Respondent to reject the application for issuance of eligibility certificate. It is in exercise of this power, the 1st Respondent has proceeded to issue the impugned communication dated 14.06.2021. It is also made clear that any person possessing a primary medical qualification awarded by any medical institution outside India and who is desirous of getting provisional or permanent registration with the 1st Respondent or with the concerned State Medical Council, should qualify the screening test conducted by the concerned authority and such a candidate will be allowed to appear in the screening test only if he/she has obtained an eligibility certificate from the 1st Respondent.

15. Having considered the above two regulations, this court has to now see if the petitioner possesses the qualification under Regulation 4(2) of the Graduate Medical Education Regulations, 1997 which provides for the eligibility criteria for admission to the medical course in India. The relevant Regulations had already been extracted supra.

16. The learned counsel appearing on behalf of the National Medical Commission submitted that the candidate has to strictly fulfil the requirements under the Regulations and under no circumstances the requirements can be diluted. To substantiate this submission, the learned counsel also relied upon the judgments of the Hon'ble Supreme Court wherein it was held that the standards fixed must be strictly adhered to and no deviations must be permitted. The learned counsel by relying upon Regulation 4(2) submitted that there is a specific requirement to study English as a compulsory/ core subject and admittedly the petitioner has not fulfilled this requirement and therefore, the petitioner is not qualified to get the eligibility certificate. The learned counsel also submitted that the relevant Regulations have not been put to challenge and the consequence of the Regulation which resulted in the impugned communication issued by the 1st Respondent alone has been put to challenge and this Writ Petition is liable to be dismissed on this sole ground. The learned counsel also placed reliance upon the latest judgment of the Hon'ble Supreme Court in ***Kaloji Narayana Rao University of Health Sciences v. StrikeertiReddiPingle&Ors*** (hereinafter referred as Kaloji University Case) in Civil Appeal No. 390 of 2021, dated 16.02.2021. The relevant portions in the judgment are extracted hereunder:

19. It is apparent that the High Court followed its previous judgment, and did not closely scrutinize the equivalence certificate or the subject stipulations. It also appears to have been largely influenced by the fact that the candidate was in fact admitted by the University. In the opinion of this court, the construction placed on Regulation 4(2), i.e., that each of the sub clauses (a) to (f) prescribes independent qualifications which should be deemed essential, is rather simplistic. That interpretation ignores the fact that each of the sub-clauses insists that certain subjects should have been studied, and practical examinations attempted at the 10+2 or equivalent level. Secondly, the college or intermediate examination for equivalent qualifications under Regulation 4(2)(f)] cannot be read in isolation, having regard to the circumstances. The provision must be read in the context of the requirements for eligibility under Regulations 4(2)(a) to (e). The equivalence in qualification is not merely at the level of a 10+2 requirement, i.e., that the candidate should have passed an examination equivalent to the intermediate science examination at an Indian University/ Board. Additional to this requirement, Regulation 4(2)(f) requires equivalence in 'standard and scope' in an examination where the candidate is tested in Physics, Chemistry and Biology including practical testing in these subjects, along with English. These subject matter requirements are consistent across Regulations 4(2)(a) to (e) and (f).

20. 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 concerned intermediate examination) 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". It would be, in this context, necessary to clarify that the equivalence relied on by the Telangana Intermediate

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.

21. The stipulation of equivalence in Regulation 4(2)(f) is not merely a formal one. The provision must be read in the context of the consistent conditions of eligibility prescribed in Regulations 4(2)(a) to (e), as noted above. This court, in State of Bombay v. R.M.D. Chamarbaugwala interpreted the definition of a prize competition!! A prize competition was defined as including crossword prize competitions, picture prize competitions, etc., and finally, any other prize competition, for which solution is or is not prepared beforehand by the promoters, or for which the solution is determined by lot or chance. This last qualification was appended only to the last sub-clause on any other competition. The court held that the qualification should be equally applicable to the other sub-clauses too, and that there was no difficulty in reading the qualifying clause as lending colour to each of those items. In the present case, Regulation 4(21) explicitly refers to the subject matter requirement reiterated in all the eligibility conditions from (a) to (e); the substance of the eligibility requirement indeed, is that the candidate should have qualified an intermediate level examination or first year of a graduate course, and studied the subjects of Physics, Chemistry and Biology at this level, along with practical testing in these subject areas, and the English language. This subject matter requirement is at the heart of eligibility to be admitted into the medical course.

22. For these reasons, this court is of the opinion that the interpretation placed up on the regulations in both the cited cases, by the Madras High Court, do not reflect the correct position. To be eligible, the candidate should produce clear and categorical material to show that she underwent the necessary years of study in all the stipulated subjects. This court is of the opinion that such stipulations are to be regarded as essential, given that the course in question, i.e., MBBS primarily if not

predominantly, involves prior knowledge - both theoretical and practical, of senior secondary level in biology or biological sciences.

17. The learned counsel for the Petitioner submitted that there is no requirement to challenge the relevant regulation since the Petitioner is fulfilling the qualification prescribed in the regulation. To substantiate this submission, the learned counsel relied upon regulations 4(2)(a) and 4(2)(f). The learned counsel submitted that while stipulating the qualification under clauses (b) to (e) under regulation 4(2), it is very specifically stated that English must be compulsorily undergone as a subject. Whereas under clause (a), the insistence is not in undergoing English as a compulsory or a core subject. It was submitted that the Petitioner has undergone the Higher Secondary Course with English as the medium of instruction and has also obtained the equivalence certificate from the 3rd respondent and the petitioner has also cleared IELTS with very high score and therefore the petitioner sufficiently fulfils ~~the qualification~~. It was therefore submitted that the 1st respondent went wrong in refusing to issue eligibility certificate to enable the petitioner to write the FMGexamination.

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18. In the considered view of this court, the relevant regulation has to be understood from the plain language that has been used in the regulation and this court cannot tweak it to suit the convenience of a candidate. Howsoever persuasive may be the plea raised by the learned counsel for the Petitioner by impressing upon the court that the Petitioner is good in English and has undergone the Higher Secondary Course through

English medium, this court is duty bound to satisfy itself as to whether the Petitioner has fulfilled the qualification criteria as prescribed under the regulation. A careful reading of Clause (a) shows that the word "OR" has been placed in between physics, chemistry, biology/ biotechnology and mathematics on the one side and any other elective subjects on the other side. When it comes to English subject, it is applicable to both streams and it is also specifically provided that the English subject must be at a level prescribed by the NCERT. Therefore, Clause (a), by no stretch, dispenses with the candidate undergoing English as a compulsory subject.

19. In so far as the fulfilment of Clause (f) is concerned, the Hon'ble supreme court in ***KalojiNaryana Rao University case*** referred *supra*, has made it very clear that it cannot be read in isolation and it must be read in the context of the requirements for eligibility under regulations 4(2)(a) to 4(2)(e). Therefore, merely because the 3rd Respondent has issued an equivalence certificate, that does not mean that the Petitioner will be entitled for the eligibility certificate without satisfying the requirements of any of the Clauses(a) to (e). Such an interpretation given by this court was specifically overruled by the Hon'ble Supreme Court and in no uncertain terms it was held that the candidate has to necessarily undergo all the stipulated subjects which also included English language. Admittedly, the Petitioner has not undergone English as a separate subject in the Higher Secondary Course. The experts in their wisdom have stipulated an eligibility criteria and this court exercising its jurisdiction under Article 226 of Constitution of India, cannot sit over judgment upon this stipulation made by the experts. The individual opinion of a judge cannot come in the way while deciding cases of this nature and this court has to

necessarily satisfy itself as to whether a candidate fulfils the qualification prescribed in the regulation. The law on this issue is well settled.

20. In the result, there is no ground to interfere with the impugned communication dated 14.06.2021 issued by the 1st Respondent and accordingly this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

25.10.2021.

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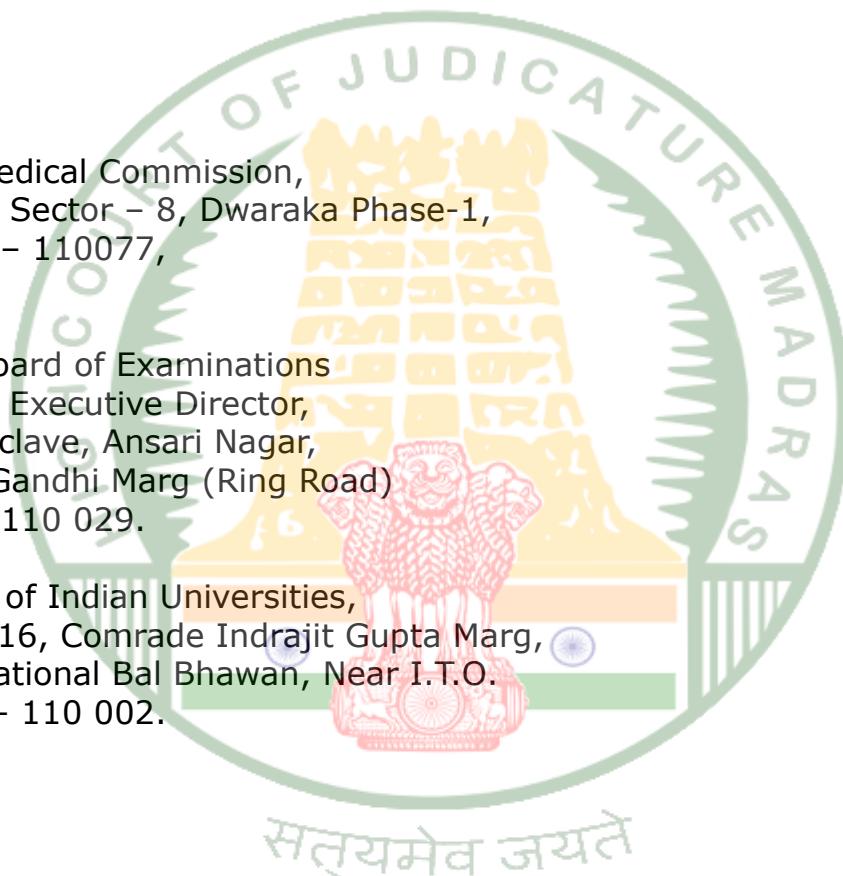
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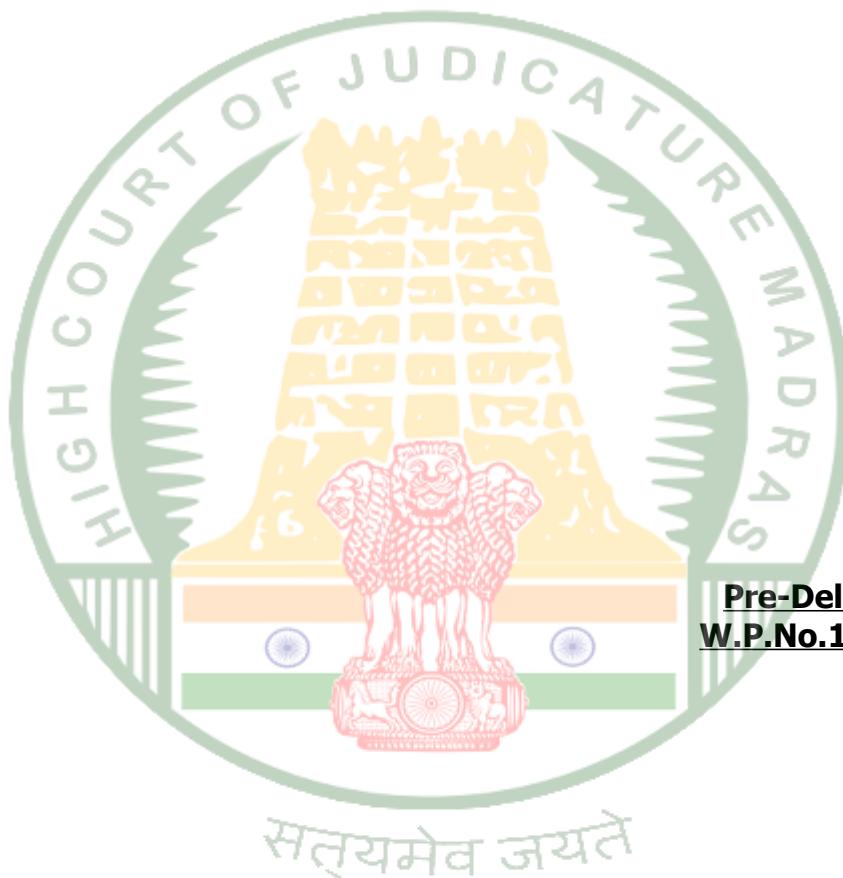
- 1 National Medical Commission,
Pocket-14, Sector – 8, Dwaraka Phase-1,
New Delhi – 110077,
India.
- 2 National Board of Examinations
Rep. by its Executive Director,
Medical Enclave, Ansari Nagar,
Mahatma Gandhi Marg (Ring Road)
New Delhi 110 029.
- 3 Association of Indian Universities,
AIU House 16, Comrade Indrajit Gupta Marg,
Opposite National Bal Bhawan, Near I.T.O.
New Delhi – 110 002.



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N.ANAND VENKATESH, J.

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