

Chief Justice's Court**AFR****Case :- WRIT - C No. - 49381 of 2015****Petitioner :-** Dr. Astha Midha**Respondent :-** Union Of India Thru' Min. Of Human Resources & 5
Others**Counsel for Petitioner :-** Ram Kaushik,Priyanka Midha**Counsel for Respondent :-** A.S.G.I.,Ajit Kumar Singh,Avanish Mishra
Vikram D Chauhan, M. Tiwari.**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice**
Hon'ble Yashwant Varma,J.

The petitioner completed her MBBS degree from Hebei University, China in 2009. Based on the degree qualification, the petitioner appeared at the screening test conducted by the National Board of Examination in India on 9 October 2009. After clearing the screening test, the petitioner was enrolled on the State Medical Register maintained by the State Medical Council of Uttar Pradesh and has also been registered with the Medical Council of India¹ on the Indian Medical Register. The petitioner then pursued postgraduate studies at the Universal College of Medical Sciences, Ranigaon, Bhairahwa, Nepal where she obtained a master's degree in General Surgery. On the basis of the master's degree certificate, the petitioner seeks to pursue a super specialization in M.Ch from the Institute of Medical Sciences, Banaras Hindu University, the fifth respondent. The petitioner applied for the registration of her postgraduate qualification under Section 26 of the Indian Medical Council Act, 1956². The application was rejected by the MCI on 18 March 2015 on the ground that the qualification was not included in the Schedules to the Act. The petitioner thereafter moved an application for acceptance of her postgraduate

¹ MCI² Act

qualification through a screening test under Section 13(4A) on 9 May 2015.

In the meantime, the entrance examination was to be conducted on 14 June 2015 for admission to the M.Ch course with the fifth respondent. At that stage, the petitioner moved a writ petition before this Court (Writ-C No. 29094 of 2015) in which a Division Bench on 20 May 2015 issued the following interim directions:

“In the light of the aforesaid, in the event, the Medical Council of India appoints the screening committee for the purpose of evaluation of the degree obtained by the petitioner and issues an appropriate order under Section 13(4A) of the Act on or before 10th of June, 2015, the petitioner would appear in the medical examination as per the result so declared by the Medical Council of India. In the event, the Medical Council of India is unable to take a decision prior to that date, the petitioner would be permitted provisionally to appear in the entrance examination but the said result would not be declared till further orders of the Court.”

The petitioner appeared for the entrance examination on a provisional basis. The application submitted by the petitioner for the registration of her postgraduate qualification of MS (General Surgery) obtained from the Universal College of Medical Sciences, Nepal as an additional qualification on the Indian Medical Register and the request for conducting a screening test were considered in a communication dated 8 June 2015 issued to the petitioner by the Secretary, MCI. The petitioner has been informed that in order to obtain a registration of the postgraduate qualification as an additional qualification under Section 26, the qualification requires to be included in accordance with the provisions of Section 12 in the Second Schedule to the Act on the basis of reciprocity or

in accordance with the provisions of Section 13 in Part II of the Third Schedule. This exercise, it has been stated, is made by the MCI on the request of the institution after satisfying itself in regard to the requirements of faculty, infrastructure and clinical materials in the foreign medical institution. No such exercise, it has been stated, had been carried out in respect of the MS (General Surgery) course of the Universal College of Medical Sciences, Nepal. Accordingly, the said postgraduate qualification has been regarded as not being a recognized medical qualification under the Act. Moreover, the petitioner has been informed that the screening test as contemplated in Section 13(4A) is held only for primary medical qualifications and not for postgraduate qualifications. On this basis, the petitioner was informed that she is not eligible to appear at the M.Ch entrance examination. That has given rise to the filing of the present proceedings under Article 226 of the Constitution.

The petitioner has basically sought four reliefs. The first is to question the legality of the order dated 8 June 2015 issued by the MCI. The second is for declaring the Screening Test Regulations as ultra vires the Constitution and Section 13 of the Act. The third is for a mandamus directing the MCI to hold a screening test to evaluate the postgraduate qualification of the petitioner as a recognized medical qualification under Section 13(4A). The fourth is to direct the fourth respondent to admit the petitioner for the M.Ch course for 2015-16.

The learned counsel appearing on behalf of the petitioner has submitted that the basis on which the petitioner was denied the benefit of a screening test under Section 13(4A) for her postgraduate medical

qualification is that this is not a primary medical qualification. The learned counsel submits that the expression “Primary Medical Qualification” has not been adopted in sub-section (4A) of Section 13. It was urged that the purpose of Section 13 (4A) is to allow such students who have obtained medical qualifications from an institution outside India which is recognized for enrollment as a medical practitioner in that country to appear in the test held by the MCI for evaluating whether the student fulfills the standard of an equivalent student in terms of knowledge and skills in India. Hence, it was submitted that a purposive interpretation should be adopted while construing the provisions of Section 13 (4A) and there is no reason to exclude from the screening test a student who seeks to avail of the test after completing a postgraduate medical qualification. In other words, it was submitted that there is no reason to confine Section 13(4A) only to a screening test for evaluating the basic medical degree obtained abroad and can be extended to a postgraduate qualification also.

Moreover, reliance was placed on a judgment of the Supreme Court in **Yash Ahuja and Ors. vs. Medical Council of India and Ors.**³ to urge that the screening test under Section 13(4A) extends also to a situation involving a medical qualification obtained by a student under Sections 12 and 13 of the Act. Secondly, it has been stated that the Screening Test Regulations 2002⁴, insofar as they provide in Regulation 3 for a screening test to evaluate a primary medical qualification awarded by an institution outside India is ultra vires Section 13(4A). On this limb of the submission, it was urged that if Section 13(4A) does not apply only to the screening of a

3 (2009) 10 SCC 313

4 Regulations of 2002

primary medical qualification obtained by a student abroad, Regulation 3 of the Regulations of 2002 which restricts the ambit of Section 13(4A) would have to be held as ultra vires.

On the other hand, it has been urged on behalf of the MCI that the language of Section 13(4A) indicates that a screening test is provided where a citizen of India has obtained a medical qualification granted by any institution in any country outside India which is recognized for **enrollment** as a medical practitioner in that country. Section 13(4A), it was submitted, provides that such a person shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his or her name entered in the Indian Medical Register. Once, a student has obtained enrollment on the State Medical Register and his or her name is entered in the Indian Medical Register, the screening test cannot be held for evaluating a subsequent postgraduate qualification which is obtained by a student. Section 26 of the Act, it was submitted, applies to the registration of additional qualifications on the Indian Medical Register. Section 26, it was submitted, applies to a situation where a student has obtained a recognized medical qualification. Admittedly, the MS (General Surgery) degree which was obtained by the petitioner from Tribhuwan University, Nepal is not a recognized medical qualification within the meaning of Section 12 or Section 13. Hence, it is urged that there was no merit in the petition.

Section 13(4A) of the Act provides as follows:

“A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India

recognised for enrolment as 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.”

In **Yash Ahuja** (*supra*), the Supreme Court explained the rationale for the introduction of a screening test under sub-section (4A) of Section 13 in the following observations:

“Over a period of time, it had come to the notice of the legislature that a large number of private agencies sponsored students for medical studies in institutions outside India for commercial consideration. It was noticed that such students also included those students, who did not fulfill the minimum eligibility requirements for admission to medical courses in India. Serious aberrations were noticed in the standard of medical education in some of the foreign countries, which were not on a par with the standards of medical education available in India. These were the defects and/or mischiefs noticed for which no provision was made either in Section 12 or sub-Sections (3) and (4) of Section 13 of the Act.

In the year 1956, when the Indian Medical Council was enacted, it must not have been contemplated by any one that a large number of private agencies would sponsor students for medical studies in institutions outside India for commercial considerations including those students who were not fulfilling the minimum eligibility requirements for admission to medical courses in India,

etc. It was, therefore, felt necessary by Parliament to make a provision to enable the Council to conduct a screening test. This is the remedy that sub-Section (4A) has provided. This remedy is prescribed to satisfy MCI with regard to the adequacy of knowledge and skills acquired by citizens of India, who obtain medical qualifications from universities or medical institutions outside India and to ensure that those students have secured the standards of medical education in the foreign countries, which are on a par with standards of medical education in India.”

The submission which was urged before the Supreme Court was that the requirement of a screening test under Section 13(4A) cannot be read together with Section 12 nor could it be applied to a qualification which is obtained under Section 13.

The Supreme Court repelled the submission by holding that though at one stage MCI had issued a press note to the effect that the Screening Test Regulations would not be applicable to students joining an undergraduate medical course in foreign countries recognised and included in the Second Schedule under Section 12, this understanding would not override the specific provisions of Section 13(4A). The view of the Supreme Court was that MCI is obliged to stipulate a screening test in the case of all those students who have obtained medical qualifications from medical institutions outside India falling within the purview of Sections 12 and 13, in view of the statutory provisions contained in Section 13(4A). Hence, it was held that the press release by MCI would not preclude it from urging the correct import of the provisions of the Act before the Court.

Basically in the present case, the provisions of Section 13(4A) fall for consideration.

Before we do so, it would be necessary to note that Section 11 deals with medical qualifications granted by Universities or Medical Institutions in India which are included in the First Schedule. These are recognised medical qualifications for the purposes of the Act. Section 12 (1) deals with the medical qualifications granted by medical institutions outside India which are included in the Second Schedule and which are treated as recognised medical qualifications for the purposes of the Act. Under subsection (2) of Section 12, MCI is permitted to enter into a negotiation with an authority in a country outside India for settling of a scheme of reciprocity with such an authority which is entrusted with the maintenance of a register of medical practitioners. In pursuance of any such scheme, the Central Government is empowered to amend the Second Schedule to include a medical qualification which MCI has decided should be recognised. Section 13(1) provides that medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications. Section 13(3) deals with medical qualifications which are included in Part II of the Third Schedule. These are medical qualifications granted by institutions outside India before such date as the Central Government by notification may specify. However, a person possessing such a qualification would not be entitled to enrollment on a State Medical Register unless he or she is a citizen of India and has undergone such practical training after obtaining the qualification as may be required by the rules or regulations of the country granting the qualification or failing that upon undergoing practical training as may be

prescribed. Under sub-section (4) of Section 13, the Central Government is empowered after consulting MCI to amend Part II of the Third Schedule so as to include any qualification granted by a medical institution outside India which is not included in the Second Schedule. However, under the first proviso to sub-section (4), Central Government cannot include in Part II of the Third Schedule any primary medical qualification granted by a medical institution outside India after the commencement of the Indian Medical Council (Amendment) Act, 2001. The second proviso to sub-section (4) of Section 13 however provides that nothing in the first proviso shall apply to the inclusion in Part II of the Third Schedule of a primary medical qualification granted by any medical institution outside India to a person whose name is entered in the Indian Medical Register. The explanation to sub-section (4) provides that for the purposes of the sub-section, the expression “Primary Medical Qualification” means any minimum qualification sufficient for enrollment on a State Medical Register or for entering the name in the Indian Medical Register.

Now, it is in this background that it would be necessary to consider sub-section (4A) of Section 13. Sub-section (4A) applies in a situation where a person is a citizen of India and has obtained a medical qualification granted by any medical institution in any country outside India. The conditions for the applicability of sub-section (4A) are:

- (i) the person who obtained the medical qualification has to be a citizen of India.
- (ii) the medical qualification should have been granted by any medical institution in a country outside India; and

(iii) the medical qualification must be recognised for enrollment as medical practitioner in that country after such date as is specified by the Central Government under sub-section (3).

Sub-section (4A) imposes a prohibition to the effect that such a person shall not be entitled to be enrolled on any Medical Register maintained by the State Medical Council or to have his or her name entered in the Indian Medical Register unless he or she qualifies at the screening test in India prescribed for the purpose. Such a foreign medical qualification is deemed to be a recognised medical qualification for the purposes of the Act after the person qualifies at the screening test.

These provisions indicate that sub-section (4A) applies at the stage where the person who obtains a medical qualification from an institution situated in any country outside India is still to be enrolled on a State Medical Register and is yet to have his or her name entered in the Indian Medical Register. The consequence of passing a screening test is that person would be entitled to have his or her name registered on the Medical Register maintained by the State Medical Council or to have his or her name registered in the Indian Medical Register. These provisions make it clear that the object and purpose of a screening test is not to recognise an **additional medical qualification** which is obtained by a student after being registered on the State Medical Register or as the case may be after his or her name is entered in the Indian Medical Register. Once the student on the strength of a medical qualification which is obtained from an institution situated outside India has appeared at the screening test and upon qualifying the screening test has been enrolled on a State Medical Register

or, in consequence, has been entered upon the Indian Medical Register, the purpose of the screening test is duly met. Section 13(4A) does not apply at a stage where the person who is already enrolled on the State Medical Register obtains an additional qualification in terms of a postgraduate degree from an institution abroad.

Additional qualifications, it must be noted, are governed by Section 26 of the Act which provides as follows:

“26. Registration of additional qualification.--(1) If any person whose name is entered in the Indian Medical Register obtains any title, diploma or other qualification for proficiency in sanitary science, public health or medicine which is a recognized medical qualification, he shall, on application made in this behalf in the prescribed manner, be entitled to have any entry stating such other title, diploma or other qualification made against his name in the Indian Medical Register either in substitution for or in addition to any entry previously made.

(2) The entries in respect of any such person in a State Medical Register shall be altered in accordance with the alterations made in the Indian Medical Register.”

Section 26 (1) deals with a situation where a person who is already on the Indian Medical Register has inter alia obtained a qualification in medicine which is a recognised medical qualification. The expression “Recognised Medical Qualification”, it must be noted, is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules. A person who obtains a recognised medical qualification is, on an application made in that behalf, entitled to have an entry stating such qualification against his or her name in the Indian Medical Register. The purpose of

having a screening test in Section 13(4A) is not to enable an additional qualification within the meaning of Section 26 to be entered against the name of a person in the Indian Medical Register. This can be done under sub-section (1) of Section 26 where the qualification itself is a recognised medical qualification.

The MCI has stated that the issue as to whether the MS in General Surgery obtained from the institute of medicine of Tribhuwan University, Nepal should be recognised is under consideration of the Council. This has been intimated to the petitioner by a letter dated 27 July 2015.

Regulation 61 of the Medical Council of India Regulations, 2000⁵ forms part of Part XI of the Medical Council of India Regulations which deals with the Indian Medical Register. Regulation 61 provides that the Registrar shall maintain the Indian Medical Register. Under clause (2), the Indian Medical Register is to contain inter alia the names of the State Medical Councils with whose Registers, the Indian Medical Register has been compiled. Under Regulation 62 all the State Medical Councils have to intimate the MCI as soon as a medical practitioner is fully registered with a State Medical Council. A similar intimation is required to be furnished including in regard to the registration of additional qualifications or the removal of the name from the Register. The Indian Medical Register would thus follow the enrollment of a person on the State Medical Register.

In the present case, it is not in dispute that the petitioner was enrolled on the State Medical Register of Uttar Pradesh on the strength of the MBBS degree which she obtained from Hebei University, China. Before the petitioner was so enrolled, she appeared in the screening test

conducted by MCI and qualified at the test. On the basis of the enrollment in the State Medical Register, the petitioner was also enrolled in the Indian Medical Register. Section 13(4A) is not attracted to the postgraduate qualification of the petitioner from Nepal, once she has been enrolled on the State Medical Register. The postgraduate degree qualification which is obtained by the petitioner is not a recognised medical qualification within the meaning of Section 12 or Section 13 of the Act.

For the reasons which we have already indicated, the petitioner was not entitled to assert a right that a screening test should be held for assessing the validity of the postgraduate qualification obtained by her from Nepal. Whether the MS in General Surgery which the petitioner has obtained should be included as one of the recognised qualifications is a matter which is actively engaging the attention of MCI. MCI, it is common ground, has recognised the MS (ENT) and MS (Orthopedic) of Tribhuwan University, Nepal. The issue as to whether this should be extended to the MS in General Surgery would be decided by the MCI in accordance with law.

We are unable to subscribe to the contention that the Regulations are ultra vires the statutory provisions contained in Section 13 (4A). Regulation 2 (f) of the Regulations of 2002 defines the expression “Primary Medical Qualification” as follows:

“Primary Medical Qualification” means a medical qualification awarded by any medical institution outside India which is a recognized qualification for enrollment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India;”

Regulation 3 of the Regulations of 2002 is in the following terms:

“An Indian citizen or a person who has been granted overseas citizenship of India 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 15-3-2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of section 13 of the Act:

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.”

The provisions contained in Regulation 3 of the Regulations of 2002 cannot be regarded as being ultra vires Section 13(4A). Section 13(4A) applies to a citizen of India who has obtained a medical qualification from an institution in a country outside India and which is recognised for enrollment as a medical practitioner in that country. Upon obtaining the qualification, the student cannot be enrolled on any Medical Register of a State Medical Council or be entered in the Indian Medical Register unless the student qualifies at a screening test in India. The screening test enables the student to be enrolled on the Medical Register of the State Medical Council and to have his or her name entered on the Indian Medical Register.

The learned counsel appearing on behalf of the petitioner is correct in submitting that the expression “Primary Medical Qualification” in the explanation to sub-section (4) of Section 13 of the Act has been defined with reference to the provisions of sub-section (4). However, quite

independent of that, it is clear that sub-section (4A) of Section 13 applies to a situation where a person who has obtained a medical qualification outside India recognised **for enrollment** as a medical practitioner in that country is to be enrolled on the Medical Register of a State Medical Council or on the Indian Medical Register. In other words, once the name of a person has already been enrolled on a State Medical Register or on the Indian Medical Register, the screening test does not apply in regard to the postgraduate qualification. The deeming fiction in Section 13(4A) applies only to the medical qualification which is obtained by a student outside India on the basis of which such student is after passing the screening test enrolled on the State Medical Register and is entered on the Indian Medical Register. Regulation 3 of the Regulations of 2002 is, therefore, in conformity with the provisions of Section 13(4A).

For these reasons, we are unable to accede to the prayers for the grant of relief in the writ petition despite the studied and able assistance rendered by the learned counsel for the petitioner.

The petition shall accordingly stand dismissed. There shall be no order as to costs.

Order Date :- 14.9.2015

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(Dr D Y Chandrachud, CJ)

(Yashwant Varma, J)