REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).3585-3586 OF 2022
(@ SLP(C)No(s). 5989-5990 of 2022)

ARAVINTH R.A. …APPELLANT(S)

VERSUS

THE SECRETARY TO THE
GOVERNMENT OF INDIA MINISTRY OF HEALTH
AND FAMILY WELFARE & ORS. …RESPONDENT(S)

J U D G M E N T

V. Ramasubramanian, J.

1. Aggrieved by the dismissal of his two writ petitions praying respectively for, ***(i)*** a declaration that Regulations 4(a)(i), 4(a)(ii), 4(b) & 4(c) of the National Medical Commission (Foreign Medical Graduate Licentiate) Regulations 2021, hereinafter referred to as '*the Licentiate Regulations*'; and ***(ii)*** a declaration that Schedule-II 2(a) and 2(c)(i) of the National Medical Commission (Compulsory Rotating Medical Internship) Regulations, 2021, (hereinafter referred to as *"CRMI Regulations"*) both published on 18.11.2021, are *ultra vires* and violative of Articles 14, 19(1)(g) and 21 of the Constitution, the writ

petitioner before the Madras High Court has come up with the above appeals.

2. We have heard Mr. Gopal Sankaranarayanan, learned senior counsel appearing for the appellant.

3. The appellant completed his Higher Secondary education in the year 2021 under the C.B.S.E. Scheme. According to him, he appeared for NEET 2021 and obtained 55.443417 percentile score. His All India NEET Rank was 68772. Therefore, he could not get admission to a medical college of his choice in India.

4. Contending ***(i)*** that he wanted to join an Under Graduate Medical Course in Anna Medical College, Mauritius; ***(ii)*** that due to the restrictions on international travel during the pandemic, he was unable to join the said Course during the academic year 2021-22; and ***(iii)*** that in the meantime the National Medical Commission of India brought the Licentiate and CRMI Regulations, imposing heavy and arbitrary burden upon students who want to pursue medical education abroad, the appellant filed two writ petitions as aforesaid.

5. Finding that the impugned Regulations were issued with a view to ensure minimum standards and that they are in no way *ultra vires* the Act or the Constitution, a Division Bench of the Madras High

Court dismissed the writ petitions. Holding that the appellant has not even made an application for admission to any institution in a foreign country and that therefore the writ petitions were nothing but a mis-adventure, the High Court also imposed costs of Rs.25,000/- upon the appellant. Therefore, the appellant has come up with these appeals.

6. As indicated at the beginning, what was challenged by the appellant before the High Court were some provisions of two different sets of Regulations. The 1st set of Regulations namely, the Licentiate Regulations were issued by the National Medical Commission in exercise of the powers conferred by Section 57 read with sub-section (4) of Section 15 of the National Medical Commission Act. The 2nd set of Regulations, namely the CRMI Regulations were issued by the Commission in exercise of the powers conferred by Section 57 read with sub-section (1) of Section 24 of the Act.

7. For the purpose of easy reference, the Regulations that were challenged by the appellant before the High Court of Madras are presented in two tabular columns as follows:-

NMC (FMGL) Regulations, 2021 (Licentiate Regulations)

Regulation	**Provision**
4.Grant of permanent registration to Foreign Medical Graduate.-	No foreign medical graduate shall be granted permanent registration, unless

	he has– (a) (i) undergone a course leading to foreign medical degree with minimum duration of fifty-four months; (ii) undergone an internship for a minimum duration of twelve months in the same foreign medical institution; … … … (b) registered with the respective professional regulatory body or otherwise, competent to grant license to practice medicine in their respective jurisdiction of the country in which the medical degree is awarded and at par with the license to practice medicine given to citizen of that country. (c) undergone supervised internship in India for a minimum of twelve months, after applying for the same to the Commission; … … …

NMC (CRMI) Regulations, 2021

Regulation	Provision
SCHEDULE-II **2. Foreign Medical Graduates**	(a) All Foreign Medical Graduates, as regulated by the National Medical Commission (Foreign Medical Graduate Licentiate) Regulations, 2021, are required to undergo internship at par with Indian Medical Graduates if they desire to seek permanent registration to practice Medicine in India. (i) All Foreign Medical Graduates, unless otherwise notified shall be required to undergo CRMI at par with Indian Medical Graduates after the National Exit Test Step-I after NExT becomes operational.

	(b) … … … (c) Foreign Medical Graduates who require to complete a period of Internship shall do so only in medical colleges or institutions approved for providing CRMI to Indian Medical Graduates: (i) Foreign Medical Graduates may be posted first in colleges which have been newly opened and have yet to be recognised. … … …

8. The challenge of the appellant to some provisions of the Licentiate Regulations, 2021 was on the following grounds:-

(i) Regulations 4(a)(i), 4(a)(ii), 4(b) and 4(c) are violative of the Right to Health, inherent in Article 21, as they tend to impair the right of the citizens to obtain quality medical treatment;

(ii) The impugned Regulations are issued in exercise of the powers conferred by Section 15(4) read with Section 57 of the Act, but these provisions do not confer any such power to frame rules and regulations in respect of such matters;

(iii) The requirement of Regulation 4(a)(i) that the foreign medical course should be of a duration of 54 months, will limit the choice available to students to select only those institutions which

offer a course of a duration of 54 months. In any case, Under Graduate Medical Course of a duration of less than 54 months is already recognised in Section 36(4) of the NMC Act.

(iv) Regulation 4(a)(ii) which makes it mandatory for a foreign medical graduate to undergo an internship for a minimum duration of 12 months in the same foreign medical institution and Regulation 4(b) which requires that such a graduate should have registered with the respective professional regulatory body of the country in which the degree was awarded, are clear examples of making extra-territorial legislation;

(v) Regulation 4(c) which requires the foreign medical graduates to undergo supervised internship in India for a minimum period of 12 months, causes undue hardship for the students, as they may have to undergo two internships, one in the foreign land and another in the mother land;

(vi) Regulation 4(b) encroaches into the immigration policy of another country, in as much as it imposes an obligation upon the students to get registered with the professional regulatory body competent to grant licence to practice medicine in their respective jurisdiction;

(vii) The impugned Regulations impose unreasonable restrictions upon the right to practice medicine and they do not even serve public interest, as the country needs more doctors;

(viii) Unreasonable restrictions imposed by these Regulations will cause brain-drain from this country;

(ix) The impugned Regulations tend to increase the average duration of the entire curriculum up to the stage of registration as a medical practitioner, to 8-9 years for a foreign medical graduate, though it is just 5½ years for an Indian medical graduate. Since the system of Modern Medicine or Allopathy is the same throughout the world and since it cannot differ from country to country, the classification of students into two categories namely those who study in India and those who study abroad, is violative of Article 14.

9. The challenge of the appellant to the second set of Regulations namely the CRMI Regulations, 2021, is on the following grounds:-

(i) Schedule II-Para 2(a)(i) requires all foreign medical graduates to undergo internship at par with Indian medical graduates. But the Regulations do not treat foreign medical graduates at par with Indian medical graduates. Therefore, there is dichotomy. There are several countries such as Ukraine, Georgia,

Nepal, Bangladesh, Armenia, Philippines and Malaysia, which offer primary medical qualification without mandatory internship. Medical institutions in countries like Mauritius offer to their foreign students, the option to do compulsory rotating medical internship in the country of their origin. But Schedule-II of the Regulations deprives the students of these opportunities;

(ii) Schedule-II Para 2(c)(i) allows foreign medical graduates to be posted first in colleges which have been newly opened and have yet to be recognised. This will dissuade students from pursuing medical education abroad, as their future will be a question mark.

10. But we do not think that any of the above grounds of challenge are sustainable in law. The Regulations impugned by the appellant may appear superficially to be rigorous or tough. But these Regulations are a product of, ***(i)*** past experience; and ***(ii)*** necessity of times. Experts in the field of education believe (and justifiably so) that over ambitious parents, hapless children, exploitative and unscrupulous (and sometimes unlettered) founders of infrastructure-deficient educational institutions, paralysed regulatory bodies and courts with misplaced sympathy, have all

contributed (not necessarily in the same order) to the commercialisation of education and the decline of standards in the field of education, in general and medical education, in particular. We may be able to appreciate this, if we have a look at the history of evolution of statutory measures taken to regulate the recognition and registration of foreign medical degrees in India.

11. The problem of unrecognised institutions offering diplomas/ degrees in medicine and untrained individuals practising medicine, is not new, but is a century old phenomenon in India. This can be seen from the fact that the first attempt to regulate the grant of titles implying qualifications in western medical science was made under the Indian Medical Degrees Act, 1916, which is an Imperial Act. Though there were Acts of the Local Council in the larger provinces of British India such as Bombay, Bengal and Madras provinces, they were found to be toothless. Therefore, the Statement of Objects and Reasons of the Indian Medical Degrees Act, 1916 recorded:-

> "…**It has been found that at present, diplomas are issued by private institutions to untrained or insufficiently trained persons, and that many of these diplomas are colourable imitations of those issued by recognised Universities and Corporations. The result is that recipients of such**

diplomas are able to pose to the public as possessing qualifications in medicine and surgery which they do not possess…"

12. Subsequently, an Act to constitute a Medical Council in India was enacted under the title *Indian Medical Council Act, 1933.* The object of creation of a Medical Council in India, as stated in the preamble of this Act, was to establish a uniform minimum standard higher qualification in Medicine for all the provinces. This Act divided the medical qualifications into three categories namely, ***(i)*** those granted by medical institutions in the States included in the First Schedule; ***(ii)*** those granted by medical institutions in the States not included in the First Schedule; and ***(iii)*** those granted by medical institutions outside those States.

13. The First Schedule to the 1933 Act included Indian Universities and the Second Schedule included institutions in countries like United Kingdom, Australia, Burma, Canada etc. It may be of interest to note that Osmania University of Hyderabad was included in the Second Schedule, as Hyderabad was not, at that point of time, a part of British India. Section 12 of the 1933 Act granted automatic recognition to the medical qualifications

obtained from the universities of the countries included in the Second Schedule.

14. After India attained independence, the Indian Medical Council Act, 1956 was passed and it came into force on 01.11.1958. This Act repealed the Indian Medical Council Act, 1933. This Act was intended to provide for the reconstitution of the Medical Council of India and the maintenance of a Medical Register for India and such other matters connected therewith.

15. The Statement of Objects and Reasons shows that the Act was intended, ***(i)*** to provide for the registration of the names of citizens of India who have obtained foreign medical qualifications, which were not recognised at that time; and ***(ii)*** to provide for the temporary recognition of medical qualifications granted by medical institutions in the countries outside India with which no scheme of reciprocity existed.

16. Section 11 of the 1956 Act contained provisions for the recognition of medical qualifications granted by universities or medical institutions in India. The First Schedule to the Act contained the list of universities and medical institutions in India, the medical qualifications granted by which, were required to be

recognised by Section 11(1). Section 11(2) dealt with universities and medical institutions in India not included in the First Schedule.

17. Section 12 contained provisions for the recognition of medical qualifications granted by medical institutions in countries with which there was a scheme of reciprocity. Such medical institutions were included in the Second Schedule.

18. Section 13 provided for recognition of medical qualifications granted by medical institutions, which are not included in the First Schedule or Second Schedule but included in the Third Schedule. The Third Schedule itself comprised of two parts. It is Part-II of the Third Schedule which contained a list of recognised medical qualifications granted by medical institutions outside India, not included in the Second Schedule.

19. Sub-section (3) of Section 13 of the Indian Medical Council Act, 1956 provided for the recognition of medical qualifications granted by medical institutions outside India, which are included in Part-II of the Third Schedule, subject to the condition that the enrolment of a person possessing such qualifications, in the Medical Register, would be conditional upon his being a citizen of India and his having undergone such practical training as may be

required by the Rules and Regulations in the country granting the qualification. If he has not undergone any practical training in that country, he must undergo practical training as may be prescribed under the Act.

20. The 1956 Act, as it was originally enacted, enabled the Central Government under Section 13(4), to amend Part-II of the Third Schedule, after consulting the Medical Council of India, so as to include therein any qualification granted by a medical institution outside India which is not included in the Second Schedule.

21. But the real headache for the 1956 Act started, when the Government of India requested the MCI in the year 1981 to consider the grant of recognition for medical courses in medical institutions in the erstwhile U.S.S.R. The Medical Council examined the request and submitted a report, after which certain institutions in the erstwhile U.S.S.R. were recognised and included in the Second Schedule of the Act.

22. After the disintegration of U.S.S.R., institutions with dubious reputations mushroomed (perhaps showing the way forward for many back home), forcing MCI to recommend in the year 1994, the de-recognition of all the medical degrees of the erstwhile U.S.S.R.

Though the students were sufficiently warned by MCI through advertisement issued in August, 1997 and the Executive Committee took certain decisions, those decisions were diluted by a high level committee in a meeting held in November, 1998. Eventually, it was decided to undertake a process of post-screening, for those coming back to India and a system of pre-screening was recommended for those desirous of taking admission in medical institutions of those countries.

23. Challenging those decisions, writ petitions were filed in different High Courts by persons who had undergone courses in Medicine in medical colleges in the erstwhile U.S.S.R. The Delhi High Court took the lead and was the first to grant relief to the candidates. When the matter reached this Court, certain suggestions were made and the General Body of MCI met on 31.03.2000 and passed certain Resolutions.

24. In order to give effect to the Executive decisions, the Government of India introduced a bill in March 2001 for the amendment of the 1956 Act. After the bill was passed, Section 13 of the Act got amended. By this Amendment Act 34 of 2001, two *provisos* and an *Explanation* were inserted under sub-section (4) of

Section 13. In addition, sub-sections (4A), (4B) & (4C) were also inserted under Section 13(4).

25. Sub-section (4A), (4B) and (4C) of Section 13 inserted by Act 34 of 2001 read as follows:-

> (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.
>
> (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.
>
> (4C) Nothing contained in sub-sections (4A) and (4B) shall apply to the medical qualifications referred to in section 14 for the purposes of that section.

26. As seen from the aforesaid provisions, sub-sections (4A)& (4B) of Section 13 operated in two different time zones, namely pre-admission to the course and post-completion of the course. While Sub-section (4B) spoke about an *eligibility certificate* to be obtained by a candidate before seeking admission to any medical institution in any foreign country, sub-section (4A) spoke about a *screening test* in India, the passing of which was necessary, to get enrolled on any Medical Register.

27. After the insertion of sub-sections (4A) and (4B), two sets of Regulations were put in place. One was the "Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002", and another was "Screening Test Regulations, 2002".

28. Regulations 3 and 4 of the Screening Test Regulations, 2002 read as follows:-

> "3. 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 15.03.2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of section 13 of theAct:

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)No persons shall be allowed to appear in screening test unless:he/she is a Citizen of India or has been granted Overseas Citizenship of India and possess any primary medical qualification, which is confirmed by the Indian Embassy concerned, to be a recognized 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 or Overseas Citizens of India who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15thMarch, 2002.

(3) He/She has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree.

Provided in cases where Central Government is informed of condition of war, civil unrest, rebellion, internal war or any such situation wherein life of Indian citizen is in distress and such information has been received through the IndianEmbassy in that country then the Council shall relax the requirement of obtaining medical education: from the same institute located abroad in respect of which communication has been received from the Indian Embassy in that country.

> (4) Provided further that a person seeking provisional or permanent registration shall not have to qualify the Screening Test if he/she holds an Undergraduate medical qualification from Australia/Canada/New Zealand/United Kingdom/United States of America and the holder thereof also been awarded a Post Graduate medical qualification in Australia/Canada/NewZealand/United Kingdom/United States of America and has been recognized for enrolment as medical practitioner in that country."

29. Both the above sets of Regulations were notified by the MCI on 18.02.2002. The date from which the provisions of the Regulations would take effect was prescribed as 15.03.2002. As a result, the appeals arising out the decisions of the Delhi High Court and the Allahabad High Court were disposed of by this Court by an order reported in ***Medical Council of India*** vs. ***Indian Doctors from Russia Welfare Associations &Ors.***[1].

30. However, another round of litigation started, with the filing of a batch of writ petitions on the file of this Court under Article 32 of the Constitution, at the instance of students who joined the Course in 1994 or 1995 or 1996 or 1999 or 2000. The challenge of these petitioners was to the Screening Test Regulations, 2002. But by a judgment in ***Sanjeev Gupta*** vs. ***Union of India***[2]**,** this Court rejected the challenge.

1(2002) 3 SCC 696
2(2005) 1 SCC 45

31. In April 2010, the MCI was rocked by a shameful scam of epic proportions, which led to the promulgation of the Indian Medical Council (Amendment) Ordinance, 2010 on 15.05.2010 superseding the Indian Medical Council and appointing a Board of Governors. The Ordinance was soon replaced by the 2010 Amendment Act. Subsequently, extension of the supersession from time to time was made under the Indian Medical Council (Amendment) Act, 2011, the Indian Medical Council (Amendment) Act, 2012 and by two subsequent ordinances.

32. At about the same time when the MCI was embroiled in a controversy, an amendment was made to Regulation 4 of the Screening Test Regulations, 2002 with effect from 16.04.2010. The Amendment was to the effect that a foreign medical graduate should have completed his entire medical course from the same institution located abroad, in order to be eligible to appear for the Screening Test. On account of this Amendment, students who pursued Under Graduate medical education partly in one foreign country and partly in another foreign country were disqualified to take the Screening Test.

33. Therefore, some of the students affected by the amendment to the Screening Test Regulations filed a batch of writ petitions on the file of the Delhi High Court assailing Regulation 4(3) of the Screening Test Regulations 2002, as amended with effect from 16.04.2010, as *ultra vires* the provisions of the Act. The Division Bench of the Delhi High Court, by a judgement dated 27.09.2013 passed in ***Rohit Naresh Agarwal*** vs. ***Union of India***[3] declared Regulation 4(3) as amended by the 2010 Regulations to be *ultra vires* the Act, in view of the purported legislative policy reflected in sub-sections (4A) and (4B) of Section 13 and the extent of power available in Clause (ma) of Section 33.

34. The Medical Council of India filed Special Leave Petitions against the said judgement of the Delhi High Court. After granting leave, those petitions were dismissed on the ground that the decision of the High Court in declaring Regulation 4(3) of the Screening Test Regulations 2002 as ultra vires, did not suffer from any error.

35. Immediately after the 2010 Amendment to the Screening Test Regulations, but before the decision of the Delhi High Court in

3(2013) 204 DLT 401 (DB)

Rohit Naresh Agarwal *(supra)*, this court had an occasion to deal with the case of students who completed the first two terms of an undergraduate medical course in an unrecognised medical college in India, but completed the last term in a medical institution in Tanzania. The batch of students comprised of (1) some, who were declined provisional registration and who could not do internship in India, (2) some, who were granted provisional registration, completed internship, but declined permanent registration and (3) some, whose permanent registration was subsequently cancelled. The High Court granted relief to all of them and the judgement of the High Court was under challenge before this Court. By a judgement reported in ***Medical Council of India*** vs. ***J. Saai Prasanna & Ors.***[4], this court affirmed the judgement of the Andhra Pradesh High Court. While doing so, this court held that "*so long as the medical institution in a country outside India has granted a medical qualification and that medical qualification is recognized for enrolment as medical practitioner in that country, all that is required for the purpose of enrolment in the medical Register in India is qualifying in the Screening Test in India*".

4(2011) 11 SCC 748.

36. More importantly, this Court held in paragraph 12 as follows:

> "*12. In the case of persons who obtained a medical qualification in a medical institution outside India, the question as to where the course of study was undergone is not relevant. The course of study could be in that country or if the norms of the Medical Council of that country so permitted, the course of study could be partly in that country and partly in another country including India.Once that country recognises a medical qualification granted by the institution in that country for the purpose of enrolment as a medical practitioner in that country, and such medical degree-holder passes the screening test in India, the Medical Council of India cannot refuse to recognise such degree on the ground that the student did a part of his study in an institution in India as a part of his medical study programme for the foreign institution.*"

37. Thus, every time when the Regulatory body attempted to plug the loopholes and reform the system, which was exploited by a few, there was a challenge to the same and the irresistible temptation to undertake an irresponsible research in the nuances of law, set them at naught many times. Courts, sometimes, were swayed by sympathy to the plight of a few students, little realising that the plight of the patients who would go to them will hardly come to light and the impact such decisions would have on the population would never be known.

38. Be that as it may, the above developments shocked the conscience of a few (at least a few), which led, in the year 2014, to

the constitution of a Group of Experts chaired by Dr. Ranjit Roy Chaudhury to study the Indian Medical Council Act, 1956 and make recommendations to the Government to make the Medical Council of India (MCI), modern and suited to the prevailing conditions.

39. The report of the said Group of Experts was subsequently examined by the Parliamentary Standing Committee on Health & Family Welfare and they submitted a report known as 92nd Report. Further, a four-member committee headed by the Vice Chairman, NITI Aayog was constituted to examine all options for reforms in MCI and to suggest a way forward. The Committee framed a draft "National Medical Commission (NMC) Bill".

40. In ***Modern Dental College and Research Centre & Ors.*** vs. ***State of Madhya Pradesh &Ors.***[5]**,** this Court directed the Central Government to take action on the above recommendations. It was in the light of such developments that the National Medical Commission Act, 2019 (*hereinafter referred to as 'NMC Act'*) was passed.

5(2016) 7 SCC353

41. The NMC Act provided for the constitution of a National Medical Commission and the constitution of four autonomous boards, each with a different mandate. The Act provided for the recognition of medical qualifications granted by universities and institutions in India under Section 35 and recognition of medical qualifications granted by medical institutions outside India, under Section 36. Section 36 of the Act reads as follows:-

> **36. Recognition of medical qualifications granted by medical institutions outside India.-**
>
> (1) Where an authority in any country outside India, which by the law of that country is entrusted with the recognition of medical qualifications in that country, makes an application to the Commission for granting recognition to such medical qualification in India, the Commission may, subject to such verification as it may deem necessary, either grant or refuse to grant recognition to that medical qualification:
>
> Provided that the Commission shall give a reasonable opportunity of being heard to such authority before refusing to grant such recognition.
>
> (2) A medical qualification which is granted recognition by the Commission under sub-section (1) shall be a recognised medical qualification for the purposes of this Act, and such qualification shall be listed and maintained by the Commission in such manner as may be specified by the regulations.
>
> (3) Where the Commission refuses to grant recognition to the medical qualification under sub-section (1), the authority concerned may prefer an appeal to the Central Government against such decision within thirty days of communication thereof.
>
> (4) All medical qualifications which have been recognised before the date of commencement of this Act and are included in the Second Schedule and Part

> II of the Third Schedule to the Indian Medical Council Act, 1956 (102 of 1956), shall also be recognised medical qualifications for the purposes of this Act, and shall be listed and maintained by the Commission in such manner as may be specified by the regulations.

42. Similarly, the Act also provided for withdrawal of recognition granted to a medical qualification, granted by medical institutions in India under Section 38 and the de-recognition of medical qualifications granted by medical institutions outside India. There was also a special provision in Section 40 for the grant of recognition to any medical qualification granted by a medical institution in a country outside India, provided that medical practice by a person possessing such qualification would depend upon his qualifying in the National Exit Test.

43. While Section 56 of the Act confers powers upon the Central Government to make rules, Section 57 confers power upon the National Medical Commission to make regulations. In order to ensure that the power of the Commission to frame regulations is very wide, sub-section (2) of Section 57 lists out about 46 matters, in respect of which NMC may make regulations.

44. It is in exercise of the power conferred by Section 57 read with sub-section (4) of Section 15 that the Licentiate Regulations 2021

were issued. Section 15 provided for the conduct of the National Exit Test. Sub-section (4) of Section 15 mandated that any person with a foreign medical qualification shall have to qualify National Exit Test for the purpose of obtaining licence to practice Medicine. Section 15(4) reads as follows:-

> **"15. National Exit Test.-** xxx xxxxxx
>
> (4) Any person with a foreign medical qualification shall have to qualify National Exit Test for the purpose of obtaining licence to practice medicine as medical practitioner and for enrolment in the State Register or the National Register, as the case may be, in such manner as may be specified by regulations.
>
> xxx xxx xxx"

45. Clause (k) of sub-section (2) of Section 57 indicates that the Regulations framed by NMC may deal with "*the manner in which a person with foreign medical qualification shall qualify National Exit Test under sub-section (4) of Section 15*".

46. At this stage we may take a small detour to point out that the Kerala State Medical Council, without waiting for the Central Government to clean up the MCI, took the lead and passed a Resolution dated 20.10.2017, making it compulsory for all foreign medical graduates to complete one year internship in any institution within India approved by MCI, for the grant of

permanent registration in the State of Kerala under the Travancore-Cochin Medical Practitioners Act, 1953. On the basis of the said Resolution, the application for permanent registration of some foreign medical graduates were rejected and the rejection became the subject matter of challenge in ***Dr. Amala Girijan and Ors.*** vs. ***The Registrar, Travancore-Cochin Medical Council and Ors.***[6] The challenge was on the ground that the Resolution of the State Medical Council was in violation of Section 37 of the State Act. However, the challenge was rejected by a learned Judge of the Kerala High Court.

47. But subsequently, the same Resolution came to be challenged by another foreign medical graduate in ***Sadhiya Siyad*** vs. ***State of Kerala and Ors.***[7] Another learned Judge of the Kerala High Court before whom the writ petitions came up, framed the following four questions as arising for consideration:-

> "***(i)*** Whether a person who has not undergone internship as part of the medical course undertaken by him/her abroad is eligible to appear in the Screening Test provided for under Section 13(4A) of the IMC Act?
>
> ***(ii)*** Whether a person who obtains Eligibility Certificate in terms of Section 13(4B) of the IMC Act after taking admission in a medical institution abroad,

6 2019 (4) SCT 224 (Kerala)
7 2021 (6) KLT 94

be denied enrolment on a State Medical Register, if he/she satisfies all other eligibility criteria for the same?

(iii) Whether a person who obtains a medical qualification from a medical institution abroad and undertakes one year internship thereafter in the country of education and satisfies all other eligibility criteria for enrolment on a State Medical Register be insisted to undergo CRRI for the said purpose?

(iv) Whether the State Medical Council functioning under the TCMP Act is empowered to take decisions in the nature of Ext. P21?"

48. The Kerala High Court held, ***(i)*** that the stand of the State Medical Council that only students who have completed internship as part of the medical course undertaken by them in the medical institutions abroad, are entitled to appear for the Screening Test, is unsustainable; ***(ii)*** that if a candidate satisfied all the requirements for enrolling as a medical practitioner on a State Medical Register in accordance with the provisions of the 1956 Act and the Regulations made there under, he cannot be denied registration by a State Medical Council; ***(iii)*** that if a candidate satisfied all the requirements for enrolling as a medical practitioner on a State Medical Register in accordance with the provisions of the 1956 Act and the regulations made there under, the State Medical Council cannot deny enrolment on the ground that the candidate had obtained Eligibility Certificate after taking admission to the medical

institution abroad and was consequently not eligible to appear for Screening Test; ***(iv)*** the requirement stipulated by the Kerala State Medical Council that such foreign medical graduates should undergo CRRI for claiming permanent registration, is inconsistent with the requirements of the 1956 Act and the Regulations; and ***(v)*** that since the 1956 Act is relatable to Entry 66 of List-I of the Seventh Schedule of the Constitution, it would prevail over the Kerala enactment relatable to Entry 25/26 of List-III.

49. Though the High Court of Kerala allowed the writ petition filed by ***Sadhiya Siyad***, it was made clear in the said Judgment that the same would not preclude the State Medical Council from bringing to the notice of the NMC, the requirement if any, for the foreign medical graduates to undergo internship afresh to get acclimatised with the diseases and requirements of treatment peculiar to the State in order to bring in force, the appropriate statutory amendments.

50. Thus, a stage was set for the NMC to issue appropriate regulations in exercise of the power conferred by Section 57 of the Act. Accordingly, the Licentiate Regulations were issued in exercise of the power conferred by Section 15(4) read with Section 57 and

the CRMI Regulations were issued in exercise of the power conferred by Section 24(1) read with Section 57 of the Act. Keeping these developments in mind, let us now test the validity of the grounds of challenge to these Regulations.

51. As we have seen earlier, the appellant challenged the validity of Regulation 4(a)(i) and Regulation 4(a)(ii), 4(b) and (4(c) of the Licentiate Regulations on several grounds, one of which is the lack of power under the Act. But the provisions extracted above would show that NMC had the power to frame the above Regulations.

52. Prescription of minimum standards would certainly include the prescription of the minimum duration for a course. It may be open to the medical institutions of other countries to prescribe a duration of less than 54 months for the students of their country. But it is not necessary for the NMC and the Central Government to recognise foreign medical degrees of a lesser duration, if the incumbent wants to have permanent registration in India.

53. The prescription of an internship for a minimum duration of 12 months in the same foreign medical institution cannot also be said to be a duplication of internships. The purpose of internship is to test the ability of the students to apply their academic knowledge

on their subjects, namely the patients. Medical institutions of other countries may not insist on rigorous internship for students who may not put to test their skills on the population of their country. But it is not necessary for us to follow suit.

54. Similarly, the requirement under Regulation 4(b) has been necessitated to ensure that the students who were imparted medical education in a foreign country demonstrate their skills first on the population of the country where they studied. The necessity for a Master Chef to taste the food prepared by him, before it is served on the guests, cannot be said to be arbitrary. Therefore, the challenge to the Licentiate Regulations, are wholly without basis.

55. The contention that Section 36(4) recognises M.B.B.S. courses of a duration of less than 54 months and that therefore the Licentiate Regulations being a subordinate legislation is *ultra vires*, is wholly unsustainable. All that sub-section (4) of Section 36 saves, are the qualifications already recognised before the date of commencement of the Act and included in the Second Schedule and Part-II of the Third Schedule to the 1956 Act. The fact that past sins are sought to be washed away, is no ground to hold that there cannot be a course correction. As a matter of fact, Section 60 which

deals with repeal and saving, also saves under clause (b) of sub-section (2), any right, privilege or obligation already acquired. This cannot be stated to be in conflict with what is prescribed for the students of the future. In any case, Section 36 deals only with recognition of the foreign medical courses and not registration as medical practitioner. Registration is covered by Section 33. Therefore, Section 36(4) cannot help the appellant.

56. The contention that the country needs more doctors and that by restricting the registration of foreign medical graduates, the fundamental right of the professionals under Article 19(1)(g) and the fundamental right of the citizens under Article 21 are impaired, is to be stated only to be rejected. It is true that the country needs more doctors, but it needs really qualified doctors and not persons trained by institutions abroad, to test their skills only in their mother land.

57. The argument that these Regulations constitute an extra-territorial law is misconceived. These Regulations do not encroach into the sovereignty of the countries where those institutions are located, by stipulating minimum standards for the students who want to practise there. These Regulations merely prescribe the

minimum standards to be fulfilled by those who study in those institutions but who want to practise here in India.

58. Insofar as the challenge to the CRMI Regulations are concerned, the same is without any substance. If there are institutions in some countries which offer primary medical qualification without mandatory internship, the students are supposed not to seek admissions in those institutions. The mad rush to become qualified medical professionals, cannot drive them to countries where short-cuts to success are offered. The requirement under Para 2(a) of Schedule-II of these Regulations for foreign medical graduates to undergo internships at par with Indian medical graduates is to ensure that only those who have acquired similar skills are allowed to practice Medicine.

59. The prescription in para 2(c)(i) of Schedule-II of these Regulations that such foreign medical graduates may be posted first in colleges which have been newly opened and have yet to be recognised, is a prescription of necessity. All medical institutions of the country are equipped to provide internships only to as many students as their permitted intake may allow. Therefore, this

Regulation is intended to ensure that an undue burden is not cast upon the already recognised institutions.

60. Therefore, we find that the dismissal of the writ petitions filed by the appellant before the Madras High Court was fully justified. We could have dismissed the SLPs *in limine*, but we thought fit to take pains to bring on record the historical facts so that the challenge to these Regulations are nipped in the bud and they do not surface in a different form or *avatar*.

61. In view of the above, the appeals are dismissed. However, the costs imposed by the High Court of Madras upon the appellant is waived off, taking into account of the fact that he is a student and also for the purpose of showing the only extent to which, a court can show sympathy in such matters.

.....J.
(Hemant Gupta)

.....J.
(V. Ramasubramanian)

New Delhi
May 2, 2022