

(2021) 09 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No.5339, 7659 Of 2018

Dr. Kavyansh Bhan And Anr

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 08-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Indian Medical Council Act, 1956 — Section 10(A), 10(B), 11, 11(2), 11(2)(2)

Citation : (2021) 09 BOM CK 0007

Hon'ble Judges : R.D. Dhanuka, J;R.I. Chagla, J

Bench : Division Bench

Advocate : Pralhad D. Paranjape, Manish Kelkar, Druti Datar, Rui A. Rodrigues, D.P. Singh, Ganesh Gole, Ritesh Ratnam, Naryan Sahu, Chirag Dave, Dnyaneshwar Jadhav

Final Decision : Dismissed

Judgement

R.I. Chagla, J

1. Rule.

2. The learned Counsel for Respondent Nos.1, 2 and 3 respectively waive service. Heard finally by consent of parties.

3. By these Writ Petitions filed under Article 226 of the Constitution of India, the Petitioners are seeking the quashing and setting aside of notification dated 22nd January, 2018 published on 12th February, 2018 and issued by the Respondent No.1 to the extent that Post Graduate Diplomas (Orthopedics in Writ Petition No.5339 of 2018) and (Ophthalmic Medicine and Surgery in Writ Petition No.7659 of 2018) being pursued by the respective Petitioners in the Respondent No.3 - The College of Physicians and Surgeons, Mumbai are de-recognized.

4. Both the Writ Petitions being almost identical and challenging the said impugned notification dated 22nd January, 2018 were heard together and are being disposed off by a common order. For the sake of convenience, the facts in

Writ Petition No.5339 of 2018 are being adverted to.

5. Prior to December 2009, the Respondent No.1 had recognized a total of 10 posts of Post Graduate Diploma and fellowships offered by the College of Physicians and Surgeons. However, in the middle of the academic year, Respondent No.1 vide notification dated 2nd December, 2009 de-recognized the ten medical qualifications offered by the College of Physicians and Surgeons. A corrigendum was issued on 3rd February, 2010 by the Respondent No.1 clarifying that the de-recognition issued was to come into effect from 2nd December, 2009 and which would mean that the students who had taken admission before 2nd December, 2009 would not be adversely affected. It was further clarified by Respondent No.2 on its website that the students who got admission prior to 2nd December, 2009 shall stand recognized.

6. On 5th August, 2016, a committee was constituted by the Respondent No.1 and Dr. Devi Shetty was appointed as Chairman of the said committee to study the curriculum of the College of Physicians and Surgeons diploma and fellowship courses and provide recommendations for recognition to these courses. The committee submitted its report on 7th October, 2016 justifying the need for granting recognition to diploma and fellowship courses of College of Physicians and Surgeons, Mumbai.

7. The Petitioner No.1 in January, 2017 completed his MBBS course with internship from Nitte University, Manglore which is recognized by Respondent No.2.

8. On 12th April, 2017, a meeting was held by the Secretary, Ministry of Health and Family Welfare in which it was decided that the diploma courses run by College of Physicians and Surgeons will be included in the First Schedule with condition that the courses will be reviewed after every three years. The minutes of these meetings were signed by the President of the Medical Council of India and Chairman Academic Committee of the Medical Council of India.

9. The Petitioner No.1 on 3rd October, 2017 through the College of Physicians and Surgeons was allotted a seat at Grant Medical Foundation Ruby Hall Clinic, Pune for Diploma in Orthopedics (DORTHO).

10. It is the Petitioners case that the Respondent No.1 accorded permission to 39 Post Graduate Diplomas Courses offered by College of Physicians and Surgeons by notification dated 17th October, 2017, which included the diploma course of the Petitioners. It is the further case of the Petitioners that on 25th October, 2017, the post holding certificate was issued to the Petitioner No.1 by the Respondent No.3 and receipt was issued acknowledging payment of admission fees by the Petitioner No.1.

11. On 17th January, 2018, another committee was constituted under the Chairmanship of Dr. B.D. Athani to examine the standard of College of Physicians and Surgeons Courses. It is stated by the Petitioners that the committee again

recommended granting recognition to various diploma courses including those of the Petitioners. However, on the basis of an objection / letter dated 2nd November, 2017 of the Respondent No.2 - the Medical Council of India, the Respondent No.1 issued notification dated 22nd January, 2018 de-recognizing 36 out of 39 courses of the College of Physicians and Surgeons, Mumbai which had been recognized on 17th October, 2017 by the Respondent No.1. Being aggrieved by the notification dated 22nd January, 2018, published on 12th February, 2018, the present Petition has been filed.

12. Mr. Pralhad Paranjape, the learned Counsel appearing for the Petitioners states on instructions that he is not pressing the case of Petitioner No.2 in Writ Petition No.5339 of 2018. He submits that in view of the Petitioner No.1 in Writ Petition No.5339 of 2018 and the Petitioner in Writ Petition No.7659 of 2018 having been admitted to their diploma courses prior to the impugned notification dated 22nd January, 2018, which de-recognized these courses, the Petitioners were entitled to undertake and complete these Post Graduate Diplomas Courses conducted by the College of Physicians and Surgeons. He has submitted that by the notification dated 17th October, 2017, the Respondent No.1 had in exercise of powers conferred under Sub Section (2) of Section 11 of the Indian Medical Council Act, 1956 (102 of 1956) hereinafter referred to as ("IMC Act") after consulting the Respondent No.2 Medical Council of India made further amendments in the First Schedule of IMC Act. By these amendments, the diploma courses (2 years courses at the Post MBBS level) granted by the College of Physicians and Surgeons, Mumbai and which included the diploma courses taken by the Petitioners were recognized. The Diploma Courses have been mentioned in the said notification and against each diploma course it is stated that "this shall be recognized medical qualification when granted by the College of Physicians and Surgeons, Mumbai on or after December, 2009". He has submitted that this clearly goes to show that the diploma courses undertaken by the Petitioners by the notification dated 17th October, 2017 were recognized diploma courses / recognized medical qualification when granted by the College of Physicians and Surgeons, Mumbai on or after December, 2009.

13. The learned Counsel for the Petitioners has placed reliance upon the decision of the Division Bench of this Court in case of Anita Kishanrao Videkar Vs. Union of India & Ors. Writ Petition No.5348 of 2018 with companion matters decision dated 24th February, 2021. He has submitted that in view of decision, the Petitioners are not pressing their challenge to the validity of the impugned notification dated 22nd January, 2018 but have restricted the issue in these Petitions as to whether the impugned notification applies prospectively and not retrospectively. He has submitted that the Division Bench of this Court in the said decision has held that the impugned notification dated 22nd January, 2018 applied prospectively and would not apply in the case of the Petitioners therein who had not only been duly admitted to the course after clearing the requisite CET, but even successfully completed the entire two years of instruction of the course and at the end of which many have even been duly assessed for their

performance at the final examination and on that basis, even awarded the prestigious qualification of Secondary DNB course. It was thus held by the Division Bench that it would be too late in the day for the Petitioners to now be told that since the recognition of their qualifying course was retrospectively withdrawn by Union of India, their entire fellowship of two years and successful prosecution of course would be brought to a naught. It has been further held by the Division Bench that for admissions for the academic year 2018-19 onwards, the diploma awarded by College of Physicians and Surgeons, Mumbai may not be recognized as an acceptable qualification for admission to secondary DNB Courses. It was noted by the Division Bench of this Court that the Petitioners therein do not challenge the de-recognition of diplomas awarded by College of Physicians and Surgeons, Mumbai by the notification dated 22nd January, 2018.

14. The learned Counsel for the Petitioners has thereafter placed reliance upon a decision of the Supreme Court in the case of *Suresh Pal and Ors. Vs. State of Haryana & Ors.* (1987) 2 Supreme Court Cases 445. The Supreme Court was concerned in that decision with a particular educational course undertaken by the Petitioners therein. The Petitioners were admitted to the educational course when the course was recognized and somewhere along the line during the time they were prosecuting the course, the course came to be de-recognized. The Supreme Court accordingly held that when the Petitioners were admitted to the course, it had requisite recognition and thus it would be unjust for the Petitioners to be told that their course had lost recognition. He has by placing reliance on *Suresh Pal* (Supra) submitted that the facts in the present Petitions are similar to the facts in *Suresh Pal* (Supra). He has submitted that in the present case, the Petitioners were also admitted to the diploma courses when the courses were recognized and during the time they were prosecuting the courses, the courses came to be de-recognized. He has submitted that the decision of the Supreme Court in *Suresh Pal* (Supra), makes it clear that it would be unjust for the Petitioners to be told that their diploma courses had lost recognition.

15. The learned Counsel for the Petitioners has further submitted that the Division Bench of this Court, in *Anita Videkar* (Supra) has in referring to the decision in *Suresh Pal* (Supra) held that the facts in that case were even at a better footing than the facts in *Suresh Pal* (Supra) as the Petitioners had not only undertaken the courses but they had even completed the courses after being declared as meritorious candidate. He has submitted that the individual qualification of secondary DNB courses had been held by the Division Bench of this Court in *Anita Videkar* (Supra) to be qualifications duly obtained and the Petitioners were declared to be individually eligible to pursue the secondary DNB courses on the basis of the qualifying diploma held by them from the College of Physicians and Surgeons, Mumbai. He has submitted that similarly the Petitioners in the present Petitions too are required to be declared as individually eligible to pursue the secondary DNB Courses on the basis of qualifying diplomas held by them from the College of Physicians and Surgeons, Mumbai as they too had recently completed their Diploma Course. Further, these diploma courses were

recognized at the time when the Petitioners were admitted to the diploma courses.

16. The learned Counsel for the Petitioners has further relied upon the decision of this Court in the case of Vidarbha Madhyamik Shikshak Sangh Vs. State of Maharashtra & Ors. 2003 SCC OnLine Bom 728.. The Division Bench of this Court had considered the issue as to whether withdrawal of recognition / equivalence in regard to degree or diploma retrospectively, is permissible or not. It was held therein that this issue is no longer res integra and has been concluded by the Division Bench of this Court in Narendra Sakharam Jadhav Vs. State of Maharashtra 2000) 3 Mah LJ 806.. It has been held that the withdrawal of recognition by Government Resolution cannot be made applicable retrospectively and it can be made only prospectively. The decision in Narendra Jadhav (Supra) in turn placed reliance on the judgment of Suresh Pal (Supra). The learned Counsel for the Petitioner has accordingly submitted that the impugned notification dated 22nd November, 2018 withdrawing the recommendation of the diploma courses is required to be made applicable only prospectively and not retrospectively.

17. He has submitted that the Committee constituted under the Chairmanship of Dr. Athani on 17th January, 2018 to examine the standard of College of Physicians and Surgeons, Mumbai diploma courses and which recommended granting recognition to various diploma courses including those undertaken by the Petitioners included the representatives of the Medical Council of India. It is only that by virtue of the prior objection / letter dated 2nd November, 2017 of the Medical Council of India that the Respondent No.1 issued the impugned notification de-recognizing 36 out of 39 diploma courses which had been prior recognized by Respondent No.1. He has submitted that the impugned notification necessarily would have to apply prospectively and cannot apply in the case of the Petitioners who were admitted prior to the impugned notification and who have been pursuing the diploma courses and in fact have now completed the diploma courses.

18. Mr. Rui Rodrigues, the learned Counsel appearing for Respondent No.1 submits that there is a window created between the notification dated 17th October, 2017 issued by the Respondent No.1 recognizing the diploma courses with retrospective effect i.e. from December, 2009 and the impugned Notification dated 22nd January, 2018 published on 12th January, 2018. He states that the admissions taken in such window can be saved. However, he has no clear instructions from the Respondent No.1. In any event he submits that after the de-recognition of the diploma courses, students such as the Petitioners could have pursued the said courses at their own risk.

19. Mr. Gole, learned Counsel appearing for the Respondent No.2 - Medical Council of India has submitted that for establishing a new medical college, the Applicant can only do so after obtaining prior permission from Central Government under Section 10(A) of the IMC Act, 1956. The permission granted

by the Central Government for establishment of the new medical college is based on the recommendations of the Medical Council of India as per Section 10(A) of the IMC Act and the Medical College Regulations, 1999. Further, a medical college has to be granted permission / recognition to conduct MBBS courses by the Central Government and thereafter can only be permitted to start higher courses of studies. He has placed specific reliance on relevant part of Section 11 read with Section 10(B) of the I.M.C. Act, 1956 and which reads thus:-

".....

11. Recognition of medical qualifications granted by Universities of medical institutions of India.

1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognized medical qualifications for the purposes of this Act.

2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognized, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

10B Non-recognition of medical qualifications in certain cases:-

1. Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college shall be a recognized medical qualification for the purpose of this Act.

2. Where any medical college opens a new or higher course of study or training (including a postgraduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognized medical qualification for the purposes of this Act.

3. Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of the increase of such medical capacity shall be a recognized medical qualification for the purposes of this Act.

....."

20. He has submitted that only those medical qualifications granted by any

University or Medical Institution in India which are included in the First Schedule shall be recognized and where they are not included in the First Schedule, the Central Government may upon an application from such University or Medical Institution, by Notification in official Gazette amend the First Schedule to include such medical qualification.

21. The learned Counsel for the Respondent No.2 has further submitted that the Petitioners have based their entire case upon the fact that the diploma courses pursued by them were granted recognition by notification dated 17th October, 2017. He has pointed out that a statement was made by the Counsel for the Petitioners in Writ Petition No.5339 of 2018 that he is not pressing the case of Petitioner No.2, which may be noted.

22. He has submitted that the Notification dated 17th October, 2017 did not have the concurrence of the Medical Council of India and it is upon the complaint made by the Medical Council of India that Respondent No.1 reconsidered the notification dated 17th October, 2017 and thereafter founded it appropriate to de-recognize the diploma courses conducted by College of Physicians and Surgeons, Mumbai by impugned notification dated 22nd January, 2018. He has submitted that the Petitioners cannot take the benefit of the notification dated 17th October, 2017, since the diploma courses pursued by the Petitioners were de-recognized by the impugned notification dated 22nd January, 2018. Further, he has submitted that the notification dated 17th October, 2017 would not come to the aid of the Petitioners as the diploma courses undertaken by the Petitioners and which were conducted by the College of Physicians and Surgeons, Mumbai were not recognized when the Petitioners had taken admission in the said diploma courses. He has submitted that it is an admitted position that the said diploma courses were never recognized prior to December, 2009 and thus the Notification dated 17th October, 2017 erroneously granted recognition to such courses on or after December, 2009.

23. He has submitted that the decision of the Division Bench of this Court in Anita Videkar (Supra) has been decided on the facts of that case and is not applicable in the case of the Petitioners. He has submitted that in that case it has been held that the Petitioners therein had not only been duly admitted to the diploma course after clearing the requisite CET, but even successfully completed the entire two years instruction of course, at the end of which they had been duly assessed for their performance at the final examination and on that basis even awarded the prestigious qualification of secondary DNB Course. It was thus held by this Court that, it was too late in the day for the Petitioners to be told that since the recognition of their qualifying course was with retrospectively withdrawn by the Union of India, their entire fellowship of two years and successful prosecution of courses would be brought to a naught. He has submitted that in the present case allotment letter dated 3rd October, 2017 was issued to the Petitioner No.1 in Writ Petition No.5339 of 2018 and allotment receipt dated 26th August, 2017 issued to the Petitioner in Writ Petition No.7659

of 2018 by which admission to the diploma courses of the College of Physicians and Surgeons, Mumbai was granted to the Petitioners prior to the notification dated 17th October, 2017. He has submitted that the diploma courses which were undertaken by the Petitioners in both Petitions got erroneous recognition subsequently on 17th October, 2017. It is an admitted position that the said diploma courses had never been recognized by the Central Government and / or the Medical Council of India. Hence, there was no question of the diploma courses being recognized in the case of the Petitioners vide notification dated 17th October, 2017. The said diploma courses pursued by Petitioners were incorrectly recognized in the notification dated 17th October, 2017 as there was no recognition to these diploma courses prior to December, 2009 and upon noticing this error, the impugned notification dated 22nd January, 2018 was issued by Respondent No.1 de-recognizing such diploma courses. He has accordingly submitted that there is no merit in these Petitions and that the Petitions be dismissed.

24. He has relied upon the decision of the Division Bench of this Court in Dr. Priya P Shah Vs. Union of India Writ Petition No.6751 of 2018 dated 13th July, 2018. (Coram : S.C. Dharmadhikari and Bharati H. Dangre, JJ). In the said decision this Court had noted the submission of the learned Counsel for the Medical Council of India and particularly, the submission as to how the Government of India had continuously ignored the opinion of the Medical Council of India and included the courses which were the subject matter of that Petition in the First Schedule to the IMC Act. Further, the Medical Council of India has indicted the College of Physicians and Surgeons in very strong terms. The communication dated 22nd November, 2017 from the Medical Council of India to the Government of India has been referred to wherein it has been stated that the College of Physicians and Surgeons, Mumbai is nothing but a society and is not a recognized University or deemed University and not governed by UGC Act, 1956. It does not have a full time teaching faculty, proper building, hospital and other infrastructural facilities for imparting teaching and training to the students. This Court had come down very heavily on the Union of India and it was observed that the history of medical education in India reveals that the Union of India hardly cares for the opinion of the expert body and rather brushes it aside conveniently so as to accommodate some courses / some institutions / some colleges. It was further observed by this Court that if we go on permitting this, a day will come when a course of this nature and type will be conducted on a road side or on the pavement without any infrastructure. We do not want any MBBS doctor with such qualification attached to his name viz. DCH (CPS), etc. It is ultimately a patient who will be misled and he would consider such doctors to be experts. The learned Counsel for the Medical Council of India has accordingly submitted that the diploma courses of the College of Physicians and Surgeons, Mumbai ought not to have been recognized in the notification dated 17th October, 2017 and such recognition was thereafter rectified in the impugned notification by de-recognizing these courses.

25. The learned Counsel for the Respondent No.3 - College of Physicians and Surgeons, Mumbai has referred to the Committee Report of recommendation of courses dated 14th April, 2017 as well as the report of hand holding committee dated 17th January, 2018 and has submitted that the representatives of Medical Council of India was a part of the discussions which the Committee had and upon which the Committee recommended granting recognition to the diploma courses of the Respondent No.3. However, he has admitted that the diploma courses pursued by the Petitioners in the two Petitions were not recognized or included in the First Schedule of the IMC Act prior to December, 2009.

26. Having considered the submissions, we are of the view that the diploma courses undertaken by the Petitioners in both the Writ Petitions viz. Post Graduate Diploma in Orthopedics pursued by the Petitioners in Writ Petition No.5339 of 2018 in the College of Physicians and Surgeons, Mumbai and the Post Graduate Diploma Course in Ophthalmic Medicine and Surgery pursued by the Petitioners in Writ Petition No.7659 of 2018 in the College of Physicians and Surgeons were never recognized by the Central Government by their inclusion in the First Schedule prior to December, 2009. Considering this position, the subsequent notification issued on 17th October, 2017 granting recognition to such diploma courses pursued by the Petitioners in both Petitions on and from December, 2009 appears to have been incorrectly issued. Such recognition of the diploma courses pursued by the Petitioners could have only been given provided the said diploma courses had been recognized prior to being de-recognized on 2nd December, 2009. We find much substance in the submissions of the learned Counsel for the Medical Council of India that there was a mistake / omission on the part of the Central Government in issuing the notification dated 17th October, 2017 since the said diploma courses pursued by the Petitioners were never prior thereto recognized by the Central Government in consultation with the Medical Council of India as per the scheme of the IMC Act and the statutory regulations made therein.

27. It is clear from reading of Section 11 that recognition of medical qualification granted by medical colleges can only be by their inclusion in the First Schedule of the IMC Act. This is clear from the wording of Section 10(B) which provides that no new or / higher course of study opened by any medical college shall be granted recognition except with the previous permission of Central Government in accordance with any provisions of Section 10(A) and only upon such previous permission of the Central Government that such medical qualification shall be a recognized medical qualification by their inclusion in the First Schedule of the IMC Act. It is provided in Section 11 of the IMC Act that in the event that the University or medical institution in India, grants a medical qualification not included in the First Schedule, such University or Medical Institution may apply to the Central Government to have such qualification recognized and the Central Government after consulting the Medical Council of India may by notification in the Official Gazette amend the First Schedule so as to include such qualification therein and any such notification issued may direct that an entry shall be made in

the last column of First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

28. In view of the position that, the said diploma courses pursued by the Petitioners in the College of Physicians & Surgeons, Mumbai were not recognized in conformity with Section 10 (A) 10(B) and Section 11 of the IMC Act, such diploma courses could never have received the subsequent recognition as it had received under the notification dated 17th October, 2017 and that to from December, 2009. From a reading of the notification dated 17th October, 2017 it appears that the Notification is issued in exercise of power conferred in Sub Section 2 (2) of Section 11 of the IMC Act, 1956 by the Central Government upon consulting the Medical Council of India. However, the non-consultation of the Medical Council of India has been noted by this Court in decision relied upon by the learned Counsel for the Medical Council of India viz. Dr Priya Shah (Supra), wherein this Court has observed that the Central Government continuously ignores the opinion of the Medical Council of India and includes courses in the First Schedule to the IMC Act. The Medical Council of India has indicted the College of Physicians and surgeons in very strong terms and this can be seen from its communication dated 2nd November, 2017. This Court had observed that the two years diploma courses being conducted by the College of Physicians and Surgeons, Mumbai throws the entire medical education in total disarray. This Court had therefore, directed the Medical Council of India to set out corrective steps at its end. It is in view of the Central Government issuing the notification dated 17th October, 2017 which recognized the diploma courses such as courses perused by the Petitioners in both Petitions that the Medical Council of India issued objection letter dated 2nd November, 2017 to the Respondent No.1 - Union of India for de-recognition of such diploma courses. Acting upon such objection letter dated 2nd November, 2017, the Respondent No.1 Union of India issued the impugned notification dated 22nd January, 2018 de-recognizing the said diploma courses of the College of Physicians and Surgeons, Mumbai.

29. The larger issue has been addressed as to whether the impugned notification dated 22nd January, 1980 operates prospectively or retrospectively and / or whether it would apply to the admission of the Petitioners to the diploma courses secured prior thereto. However, in view of the position that the diploma courses were never recognized prior to December, 2009, it would not be necessary to go into the larger issue.

30. The decision of this Court in Anita Videkar (Supra) cannot be applied to the case of the Petitioners. In that case the diploma course was recognized as per notification dated 17th October, 2017 on or after December, 2009. Further, the Petitioners have not only been duly admitted to such diploma course after clearing the requisite CET but have successfully completed the entire two years instruction of course, at the end of which many had even been duly assessed for their performance at the final examination and on that basis, even awarded the

prestigious qualification of Secondary DNB Course. In view of the above facts, the Division Bench of this Court held that it was too late in the day for the Petitioners to now be told that since recognition of their qualifying course was retrospectively withdrawn by the Central Government, their entire fellowship of two years and successful prosecution of the courses would be brought to a naught. In the present case the Petitioners had been admitted to the diploma courses of the College of Physicians and Surgeons three months prior to the impugned notification being issued on 22nd January, 2018 de-recognizing these courses. The Petitioners thereafter pursued the de-recognized diploma courses and have recently completed them. Thus, the finding of the Division Bench is not applicable to the case of the Petitioners.

31. The decision of the Supreme Court in Suresh Pal (Supra) was in the context of a particular educational course to which the Petitioners had been admitted at the time when the course was recognized and somewhere along the line, during the time they were prosecuting the course, the course became de-recognized. It is in this context that the Supreme Court held that when the Petitioners were admitted to the course, it had the requisite recognition, it would be, therefore, unjust for them to be told that their course had lost recognition. This decision also does not apply in the facts of the present case as the Petitioners were admitted to a course which had no recognition under the provisions of the IMC Act and by the notification dated 17th October, 2017, there was a clear error in including such diploma courses which had not been recognized prior thereto and giving them recognition on or after December, 2009. The 10 medical qualifications which had been de-recognized on 2nd December, 2009 were the only courses which could have been recognized on or after December, 2009 by the said Notification dated 17th October, 2017. Admittedly the diploma courses pursued by the Petitioners in the College of Physicians and Surgeons, Mumbai were clearly not part of the ten medical qualifications. In our view, the said notification dated 17th October, 2017 could not have granted such recognition to the diploma courses pursued by the Petitioners as these diploma courses had not been recognized prior thereto. The said diploma courses were also not included in the First Schedule to the IMC Act, 1956 prior to December, 2009 and could not be included by way of the notification dated 17th October, 2017.

32. The decision of this Court in Vidarbha (Supra) relied upon by the learned Counsel for the Petitioners will not come to the aid of the Petitioners. In the said decision it has been held that the Government Resolution withdrawing recognition / equivalence in regard to degree or diploma courses cannot be made applicable retrospectively and can be made applicable only prospectively. Considering that the diploma courses pursued by Petitioners in both Petitions had not received any recognition prior to December, 2009, it would be immaterial as to whether the impugned notification dated 22nd January, 2018 applied retrospectively or prospectively in so far as the Petitioners case is concerned. Thus, this issue is not required to be determined in this Petition.

33. We have noted the fact that the Petitioners have already completed the diploma courses pursued by them in College of Physicians and Surgeons, Mumbai. The Petitioner No.1 in Writ Petition No.5339 of 2018 has completed diploma course in Orthopedics in July, 2021 and the Petitioner in Writ Petition No.7659 of 2018 had completed the diploma course in Ophthalmic Medicine and Surgery in October, 2020. Such completion of the diploma courses would be an immaterial fact considering that the diploma courses was admittedly not recognized prior to December, 2009. In view thereof, no equity can be claimed by the Petitioners in completing their diploma courses of the College of Physicians and Surgeons, Mumbai. We do not find any merit in any of these Writ Petitions and accordingly the Writ Petitions are dismissed.

There shall be no order as to costs.