

(2021) 09 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No.3402, 3626, 3627 Of 2021

Dr. Sobi George Thomas And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

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

Citation : (2021) 09 BOM CK 0033

Hon'ble Judges : R. D. Dhanuka, J;Abhay Ahuja, J

Bench : Division Bench

Advocate : V.M. Thorat, Pooja V. Thorat, Madhav V. Thorat, Anukul B. Seth, Rui A. Rodrigues, D.P. Singh, Ganesh K. Gole, Ritesh Ratnam

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J

1. Rule. Mr.Rodrigues, learned Special Counsel for the respondent no.1 waives service. Mr.Gole, learned counsel for the respondent nos.2 & 3 waives service. By consent of parties, all three petitions were heard together and are being disposed of by a common order.

2. Learned counsel for the parties jointly state that the facts and issues raised in all three petitions are identical and thus the judgment of this Court in Writ Petition No.3402 of 2021 would apply to other two writ petitions. Some of the relevant facts for the purpose of deciding these petitions are as under :-

3. By these petitions filed under Article 226 of the Constitution of India, the petitioners seek a declaration that all the petitioners and the students appearing at Exhibit 'A' are admitted to recognized courses and are eligible to pursue secondary DNB course being conducted by National Board of Examinations. The petitioners also seek order and directions against the National Board of Examination to consider the petitioners and students appearing at Exhibit 'A' to

the writ petition as eligible and allow them to appear for Common Entrance Test (CET) scheduled to be held on or about 9th May 2021 for admission to secondary DNB courses.

4. It is the case of the petitioners that all the petitioners and the students whose names are appearing in Exhibit 'A' to the petition were admitted to MBBS course in their respective recognised medical colleges situated in various parts of India and/or abroad. All the petitioners after passing their MBBS course also completed compulsory internship and were conferred with recognised MBBS degree by their respective Universities and became eligible to pursue post graduate diploma or degree courses conducted by various statutory bodies like Universities and/or Deemed University and/or College of Physicians & Surgeon (CPS) and/or National Board of Examination. It is the case of the petitioners that after passing MBBS course with internship they decided to take admission to post graduate courses which are recognized by the Medical Council of India and appearing in the Schedule to the Indian Medical Council Act (for short "the IMC Act").

5. It is the case of the petitioners that at the relevant time, all the petitioners came across the Notification dated 17th October 2017 issued by the respondent Union of India on the recommendations of Medical Council of India.

6. By the said Notification, all the diploma qualifications awarded by the CPS came to be recognized with retrospective effect from the year 2009, as stipulated under Section 11 of the IMC Act. All the petitioners therefore decided to take admission to diploma courses of CPS which are recognized by the Union of India according to the petitioners. The petitioners were selected to various diploma courses in the hospitals affiliated to the CPS. All the petitioners came to be admitted between 17th October 2017 and 12th February 2018 for 2 years diploma courses of CPS. It is the case of the petitioners that all the petitioners attended the said course regularly and appeared for annual examination conducted by CPS and passed the same.

7. It is the case of the petitioners that National Board of Examination conducts postgraduate degree courses under the nomenclature which is known as DNB PG course which is of 3 years and the same can be pursued by the students after obtaining MBBS degree from the recognized University. If the student completes MBBS degree course and gets admission to DNB primary course, he had to complete the same by undertaking the course for 3 years. The student who after passing MBBS course, obtains diploma, then he is allowed to pursue DNB Secondary course which is of 2 years. Such student gets exemption of one year in completing PG DNB degree course. National Board of Examinations conducts CET every year.

8. As per the Rules framed by the National Board of Examinations for being eligible to pursue secondary DNB course, student is required to pass MBBS course from the recognized college and he is also required to obtain post graduate diploma course which is also required to be recognized by the Medical

Council of India. If the diploma course obtained by such student is not recognized, then such student is not allowed to pursue DNB secondary course.

9. It is the case of the petitioners that by notification dated 17th October 2017, the diploma course to which petitioners came to be admitted are recognized by the Union of India on the recommendations of Medical Council of India. It is the case of the petitioners that immediately after their admission, the Union of India by Notification dated 12th February 2018 de-recognised the qualifications which were recognized under earlier Notification dated 17th October 2017.

10. It is the case of the petitioners that by earlier Notification dated 17th October 2017, certain courses were recognized and allowed to appear under the First Schedule to the IMC Act and by another Gazette Notification dated 12th February 2018, certain courses and particularly to which the petitioners were admitted came to be de-recognised. According to the petitioners, after passing the diploma courses, all the petitioners therefore, made enquiry with the National Board of Examination as to their status for appearing in the CET for Secondary DNB courses. The National Board of Examination however, informed them that since the diploma courses possessed by them are de-recognised by the Gazette Notification dated 12th February 2018, they will not be allowed to appear for CET for admission to secondary DNB courses. The petitioners were also told that the students who were admitted on the basis of Gazette Notification dated 17th October 2017, their passing certificates of DNB qualifications were also recalled.

11. It is the case of the petitioners that some of the students had appeared for CET conducted by National Board of Examination on the strength of their diploma recognised by notification dated 17th October 2017 but were not considered eligible, though they passed the said CET. Those students filed writ petition (3087 of 2018) in this Court impugning the action of National Board of Examination. By an order dated 10th April 2018 passed by this Court, this Court directed the National Board of Examination to consider them eligible for secondary DNB courses. All those students, thereafter, completed their secondary DNB course and all those students enrolled themselves with their respective Medical Councils and started practicing as experts on the basis of such diploma qualifications.

12. Mr.Thorat, learned counsel for the petitioners submits that all the petitioners had taken admission in the said diploma courses on the basis of Notification dated 17th October 2017. The petitioners have completed the said course. The said Government Notification dated 12th February 2018 thereby de-recognising the qualifications which were recognized under earlier Notification dated 17th October 2017 could not have been applied with retrospective effect. The petitioners who had taken admission pursuant to the said Notification dated 17th October 2017 have vested right in view of the said Notification dated 17th October 2017. The petitioners are thus entitled to seek admission in the secondary DNB course and are entitled to appear for CET for secondary DNB course. It is submitted that all the petitioners had taken admission in the diploma

courses on the basis of marks obtained in NEET i.e. on merit. The said courses were recognized when the petitioners had taken admission.

13. It is submitted by the learned counsel that though the petitioners had not challenged the said Notification dated 12th February 2018, the said notification cannot be applied with retrospective effect. He submits that by the said Notification dated 17th October 2017, 39 courses were recognized by the Union of India and were inserted in the First Schedule of the IMC Act. There is no concept of equivalence introduced by the said IMC Act by making the said provisions or otherwise. The diploma obtained by the petitioners were recognized and inserted by the First Schedule of the IMC Act pursuant to the said Notification dated 17th October 2017.

14. Learned counsel submitted that a chart showing the numbers of students admitted in different courses pursuant to the said Notification dated 17th October 2017. He relied upon an order dated 10th April 2018 passed by the Division Bench of this Court in Writ Petition No.3087 of 2018 and more particularly prima facie observations made in paragraph 5 of the said order observing that the right which is accrued to the petitioners on 17th October 2017 could not be taken away by the notification dated 22nd January 2018. He submits that the students admitted in various recognized diploma courses during the window period i.e. 17th October 2017 and 12th February 2018 cannot be refused to pursue secondary DNB course.

15. Learned counsel for the petitioners strongly placed reliance on the judgment of Division Bench of this Court delivered on 24th February 2021 in Writ Petition No.5343 of 2018 filed by Anita Kishanrao Videkar Vs. Union of India and Ors and companion matters and more particularly paragraph 5 thereof and would submit that though in that matter also, the petitioners had not challenged the de-recognition of diplomas awarded by CPS by Notification dated 22nd January 2018, since they had appeared for CET, they were qualified to be admitted to the Secondary DNB course. He submits that similar protection shall be granted to the petitioners in view of the facts of these matters being identical to the facts before this Court in the case of Anita Videkar (supra).

16. Learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra and Ors., (1994) 4 SCC 602 and in particular paragraph 26 thereof in support of the submission that the said Government Notification dated 12th February 2018 cannot be made effective with retrospective effect.

17. It is submitted that all the students who were admitted to different courses were permitted to get admission in DNB course except petitioners. All such students were enrolled with Medical Council of India on the basis of those 39 recognized courses. He relied upon the judgment of the Hon'ble Supreme Court in the case of Suresh Pal and Ors. Vs. State of Haryana & Ors., (1987) 2 SCC 445 and would submit that the said judgment would apply to the facts of this case.

He submits that the case of the petitioners stand on even better footing than the case before this Court in the case of Anita Videkar (supra) and thus the petitioners are entitled to appear for CET examination and to undertake the course of DNB.

18. Learned counsel made an attempt to distinguish the judgment of this Court delivered on 8th September 2021 in Writ Petition No.5339 and 2018 filed by Dr.Kavyansh Bhan & Anr. Vs. Union of India and companion writ petition and would submit that there is no provision under the said IMC Act to make an application for inserting any qualification or diploma course in the First Schedule appended to the said IMC Act. There has to be parity in equity.

19. Mr.Gole, learned counsel for the respondent nos.2 & 3, on the other hand, submits that the petitioners could not point out before this Court whether the Courses pursued by the petitioners were at all recognized prior to 2009. He strongly placed reliance on the said unreported of the judgment in the case of Dr.Kavyansh Bhan & Anr. (supra) and in particular paragraphs 26 to 32 and would submit that this Court has already held in the said judgment that the said diploma courses pursued by the Petitioners in the CPS, 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. He submits that the facts in this case are exactly identical to the facts before this Court in the said writ petition in the case of Dr.Kavyansh Bhan & Anr. (supra).

20. Learned counsel submitted that the said CPS never made an application for including the said diploma courses in the First Schedule of the IMC Act at any point of time. The petitioners have not even challenged the Notification dated 12th February 2018 in these writ petitions. He invited our attention to the Government Notification dated 17th October 2017 and more particularly note (ii) and would submit that it was made clear that the CPS qualification shall not be treated as recognised medical qualification for the purpose of teaching. Learned counsel invited our attention to various averments made by the Union of India in the affidavit-in-reply affirmed on 2nd September 2021 and would submit that the Union of India has clearly stated that certain courses such as DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS (Derm.), FCPS (Mid. & Gyn.) and FCPS (Ophth.) only recognised CPS courses at present. He submits that Union of India had admitted that the course pursued by the petitioners have not been recognised at any point of time.

21. Learned counsel for respondent nos.2 & 3 distinguished the judgment of the Division Bench of this Court in the case of Anita Videkar (supra) on the ground that in that matter that the petitioners had already completed the course much before the said Notification dated 12th February 2018. He submits that though on 12th February 2018, the petitioners were aware about the de-recognition of those 39 courses, the petitioners allegedly continued their diploma courses

without impugning the Notification dated 12th February 2018. The respondent nos.2 & 3 did not supervise these courses after 12th

February 2018. The petitioners cannot be thus allowed to claim equity or plead estoppel similar to the case before this Court in the case of Anita Videkar(supra). He submits that Clause 4.10 of brochure for Eligibility also has not been impugned by the petitioners. He also relied upon the judgment of the Delhi High Court delivered on 9th April 2021 in Writ Petition (C) No.4252 of 2021 filed by Dr.Umang Litoriya & Ors. Vs.Union of India & Ors.

22. Mr.Rodrigues, learned Special Counsel for the Union of India invited our attention to various paragraphs in the affidavit-in-reply filed by the Union of India and would submit that the Union of India has not challenged the said decision rendered by this Court on 8th September 2021 in the case of Dr.Kavyansh Bhan & Anr. (supra). He submits that only limited diploma courses conducted by CPS have been recognised by the Union of India as set out in paragraphs 12 and 15 of the said affidavit.

23. Mr.Thorat, learned counsel for the petitioners in rejoinder submits that there is no doubt that those 39 courses were de-recognised vide Notification dated 12th February 2018. It is however not the case of the respondents that those courses have been de-recognised since 2009. The respondents cannot be allowed to apply the said Notification dated 12th February 2018 with retrospective effect. He submits that if according to the respondents, between 2009 to 2017, those 39 courses were not recognised, how the respondents could have recognised only 3 courses out of those 39 courses. He submits that there has to be parity in equity as is accepted by the Division Bench of this Court in the said judgment in the case of Anita Videkar (supra).

REASONS AND CONCLUSIONS :-

24. The petitioners claimed to have taken admission to secondary DNB diploma courses on the basis of the Notification dated 17th October 2017 thereby inserting various Diploma Courses (two years courses at the Post MBBS level) granted by CPS, Mumbai . It is the case of the petitioners that the petitioners had joined the said diploma courses for one or the other diploma out of 38 diplomas mentioned in the said Notification dated 17th October 2017. The diploma courses attended by the petitioners are described at Exhibit 'C' to the petition i.e. Diploma in Anesthesiology, Diploma in Orthopaedics, Diploma in Tuberculosis & Chest Diseases etc.

25. It is not in dispute that by Government Notification dated 12th February 2018, Union of India de-recongnised the diploma courses which were recognized under earlier Notification dated 17th October 2017. None of the petitioners have challenged the validity of the Notification dated 12th February 2018. It is averred by the petitioners that all the petitioners came to be admitted between 17th October 2017 and 12th February 2018 for two years diploma courses of the said CPS. In paragraph 3 (F) of the petition, it is averred by the petitioners that

immediately after their admission, the Union of India by Notification dated 12th February 2018 de-recongnised the qualifications which were recognized under earlier Notification dated 17th October 2017. The National Board of Examinations had informed the petitioners that since the diploma courses possessed by them are de-recognised by the Gazette Notification dated 12th February 2018, they will not be allowed to appear for CET for admission to secondary DNB courses which were scheduled to be held on or about 9th May 2021. It is thus clear that these petitioners were fully aware of the said Notification dated 12th February 2018 de-recognising the qualification which were recognised under earlier Notification dated 17th October 2017. The petitioners did not challenge the said notification immediately or even in these petitions belatedly filed in the year 2021.

26. In the judgment in the case of Dr.Kavyansh Bhan & Anr. (supra), this Court has considered the petitions filed by some of the doctors who had appeared for various such diploma courses conducted by the said CPS. This Court in the said judgment has held that the Post Graduate Diploma Course in Ophthalmic Medicine and Surgery pursued by the Petitioners 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. This Court has held that 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.

27. This Court has accordingly held that 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 that could not have been recognised by the Notification dated 17th October 2017. This Court also held that the said diploma courses pursued by the petitioners in the CPS, Mumbai were not having been 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.

28. This Court has held that 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. This Court has noted that 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. This Court has observed in the said judgment in case of Dr.Priya Shah (supra) that two years diploma courses being conducted by the College of Physicians and Surgeons, Mumbai throws the entire medical education in total disarray and has accordingly directed the Medical Council of India to set out corrective steps at its end.

29. This Court has accordingly held that since 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.

30. In paragraph 33 of the said judgment, this Court has held that this Court after noticing the fact that the petitioners had already completed the diploma courses pursued by them in the said College of Physicians and Surgeons, Mumbai, held that such completion of the diploma courses would be an immaterial fact considering that the diploma courses were admittedly not recognized prior to December, 2009 and thus no equity could be claimed by the Petitioners in completing their diploma courses of CPS. This Court has accordingly dismissed those two petitions.

31. In the facts of this case also, the diploma courses pursued by the petitioners conducted by the said CPS were not recognised prior to 2009. Learned counsel for the petitioners could not distinguish the judgment of this Court in the case of Dr.Kavyansh Bhan & Anr. (supra). In our view, the said judgment squarely applies to the facts of this case. The said judgment is not stayed by the Hon'ble Supreme Court. We are respectfully bound by the principles of law laid down by this Court in the said judgment. We do not propose to take a different view in the matter.

32. A perusal of the affidavit-in-reply filed by the Union of India notarised on 2nd September 2021 also clearly indicates that only limited diploma courses conducted by the said CPS were recognised by the Union of India such as DGO, DCH, DPB, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS (Derm.), FCPS (Mid. & Gyn.) and FCPS (Ophth.). None of the courses studied by the petitioners are recognised by the Union of India. The respondent nos.2 and 3 did not supervise the said courses after 12th February 2018.

33. In so far as the interim order passed by this Court on 10th April 2018 in Writ Petition No.3087 of 2018 which was also subsequently disposed of by a common order making prima facie observation in paragraph 5 that the right which is accrued to the petitioners on 17th October 2017 could not be taken away by the notification dated 22nd January 2018 is concerned, is not a binding precedent. Be that as it may, since the said diploma courses undertaken by the petitioners were never recognised prior to 2009, there was no question of there being any right having been accrued to the petitioners on 17th October 2017 which were alleged to have been taken away by the Notification dated 22nd January 2018.

34. In so far as the judgment delivered by this Court on 24th February 2021 strongly relied upon by the learned counsel for the petitioners in the case of Anita Videkar (supra) is concerned, this Court considered the fact that by interim order, Division Bench of this Court had directed the respondents to permit the petitioners therein to go ahead with secondary DNB course as per the original Notification dated 17th October 2017. At the time of the petitioners' appearance at the CET for undertaking secondary DNB course conducted by the respondent no.3, they had the requisite qualification for undertaking the course. Individual diplomas awarded to them by the said CPS were recognised under IMC Act. It is held that the petitioners had cleared the same and were admitted to secondary DNB course.

35. This Court held that the petitioners had already undergone and completed the entire two years of the course. Many of them had not only cleared the course and obtained the qualification of secondary DNB, but had even started practicing with such qualification. This Court accordingly held that it will 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 the Union Government, their entire fellowship of two years and successful prosecution of the course would be brought to a naught. In the said judgment, in paragraph 5, this Court observed that it is another matter that for admissions for the academic year 2018-19 onward, diplomas awarded by the said CPS may not be recognised as an acceptable qualification for admission to secondary DNB course.

36. In our view, the facts before the Division Bench of this Court in the case of Anita Videkar (supra) are totally different. In this case, the petitioners have not pointed out that the diploma courses pursued by them were recognised prior to 2009. The view taken by this Court in paragraph 5 of the said judgment would support the case of the respondent nos. 2 & 3 and not the petitioners. In this case, admittedly the petitioners had taken admission during the period between 17th October 2017 and 12th February 2018. The petitioners were aware of the said Notification dated 12th February 2018 but did not prefer to challenge the validity of the said notification and continued their courses at their own risk. The petitioners thus cannot claim any equity on the ground that they have completed their entire course and they would be allowed to pursue further courses. In case of Anita Videkar (supra), the petitioners were allowed to appear for CET and to pursue the course by interim order. The petitioners had completed the course on the basis of the interim order.

37. In so far the submission of the learned counsel for the petitioners that there is no basis of the Union of India recognising only 3 courses out of 39 courses which have been de-recognised is ppn 24 wp-3402.21 & ors(j).doc concerned, it is not in dispute that the petitioners have not impugned the said notification dated 12th February 2018. We are thus not inclined to accept this submission of the learned counsel for the petitioners. There is no dispute about the proposition of law laid down by the Hon'ble Supreme Court in case of Hitendra Thakur (supra).

The judgment in case of Suresh Pal (supra) would not advance the case of the petitioners.

38. The petitioners could not point out whether any mandatory procedure required to be followed under Section 10(A), 10(B) and Section 11 of the IMC Act had been followed for including the diploma courses pursued by the petitioners by the said CPS at any point of time prior to 2009 or even thereafter. There is thus no question of those diplomas not having been included in the schedule to the IMC Act being recognised at any point of time.

39. In our view, the petitions are devoid of merit. We accordingly pass the following order :-

- (i) Writ Petition Nos.3402 of 2021, 3626 of 2021 and 3627 of 2021 are dismissed.
- (ii) There shall be no order as to costs.