

(2021) 05 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 4252, 4628, 4781, 4820 Of 2021, Civil Miscellaneous Application No. 12933, 14219, 14747, 14854, 15811 Of 2021

Dr. Umang Litoriya & Ors.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 04-05-2021

Acts Referred:

National Medical Commission Act, 2019 — Section 35(8)

Citation : (2021) 05 DEL CK 0013

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Mithu Jain, Apoorve Karol, Jitesh Vikram Srivastava, Vinod Tiwari, Prajesh Vikram Srivastava, Kirtiman Singh, Waize Ali Noor, Taha Yasin, Satvik Varma, Manish Dhir, Yogesh Chawak, Tanveer Oberoi, T. Singhdev, Michelle Biakthansangi Das

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through video conferencing.

CM APPL. 15802/2021 in W.P. (C) 4252/2021

CM APPL. 15801/2021 in W.P. (C) 4781/2021

CM APPL. 15811/2021 in W.P. (C) 4628/2021

2. These are applications for exemption from filing the duly attested affidavit in reply by the National Medical Commission (hereinafter, 'NMC')

i.e., Respondent No. 2.

3. The affidavits in reply are taken on record and the deponent shall be bound by the contents of the same. Applications are disposed of.

W.P. (C) 4628/2021 & CM APPLs. 14219/2021 (for stay and directions)

W.P. (C) 4781/2021 & CM APPL. 14747/2021 (for stay and directions)

W.P.(C) 4820/2021 & CM APPL. 14854/2021 (for directions)

W.P. (C) 4252/2021 & CM APPL. 12933/2021 (for stay and directions)

4. These writ petitions have been preferred by various doctors who possess MBBS qualifications and have thereafter completed their diplomas from

the College of Physicians and Surgeons, Mumbai (hereinafter, 'CPS Mumbai').

5. All the Petitioners wish to appear for the DNB-PDCET, 2021, conducted by the National Board of Examinations (hereinafter, 'NBE'). The

said examination was advertised by the NBE vide its Information Bulletin published on 25th March, 2021. The challenge in these petitions is to Clause

4.8 of the said Information Bulletin, which puts an embargo on candidates such as the Petitioners from applying for the DNB-PDCET, 2021, unless

and until the Government of India confirms that their diploma qualifications are equivalent with their counterpart PG Medical Diploma qualifications of

NMC/MCI.

6. These matters have been listed from time to time. The lead matter is W.P.(C) 4252/2021, which has been preferred by eight doctors. The said

petition was taken up on 9th April, 2021, on which date, after conducting the preliminary hearing, the Petitioners were permitted to apply for appearing

in the DNB-PDCET, 2021 examination. The order dated 9th April, 2021 reads as under:

'11. After hearing Id. counsels for the parties and perusing the record, especially the affidavit of the NBE, it is clear that until 25th

March, 2021, when the Information Bulletin was published, diploma holders from CPS Mumbai appeared in the DNB-PDCET examination

conducted in the previous years. There appears to be some doubt raised on behalf of the NBE as to whether the diploma qualifications

awarded by CPS Mumbai are equivalent or not with their counterpart PG Medical Diploma qualifications of NMC/MCI. According to Mr.

Kirtiman Singh, Id. counsel, several letters have been written by the NBE to the MoHFW, as also to the National Medical Commission.

However, for whatever reasons, no stand has been taken as to the equivalence of the diplomas awarded the CPS Mumbai.

12. The urgency in the present petition, at this stage, is that the DNB PDCET, 2021 examination is to be conducted on 9th May, 2021 and

the last date for submission of applications is April, 2021. The eligibility criteria, as stated in the Information Bulletin, reads as under:

4.1. Candidates who have passed the final examination leading to the award of Post Graduate Diploma from Indian Universities which are duly recognized as per provisions of the NMC Act 2019 and the repealed Indian Medical Council Act 1956, Govt of India can apply for the DNB-PDCET 2021 in the same Broad specialty.

4.8. Candidates possessing Diploma qualifications awarded by the College of Physicians and Surgeons (CPS). Mumhai are not eligible to

apply for DNB-PDCET till such time equivalence of CPS diploma qualifications with their counterpart PG Medical Diploma qualifications

of NMC/MCL (as per PGMER, 2000) is confirmed by the Govt of India i.e. CPS diploma qualifications are equivalent to corresponding PG

Diploma qualifications of NMC/MCL

13. There is no doubt that previously, Clause 4.8 was never part of the Information Bulletin and only Clause 4.1 prescribed the eligibility

criteria. In the past, candidates who are equally placed as the Petitioners, were being permitted to appear in the DNB-PDCET examination.

A sudden embargo has been imposed on the Petitioners and if they are not permitted to file their applications, they would be losing out on

an entire academic year, which would cause irreparable prejudice to the Petitioners. Going by the past conduct, where candidates who had

obtained diploma qualifications from CPS Mumbai have been permitted to appear in the examination, and considering that the Petitioners

have all obtained their diplomas prior to the publication of the Information Bulletin, this Court is of the opinion that, at this stage, the

Petitioners ought to be permitted to submit their applications on or before the deadline set out in the Information Bulletin i.e., 14th April,

2021. If the Petitioners have already submitted their applications, the same shall be accepted by the NBE and processed in time, along with

the other applications. Admit cards shall also be issued. The same shall be subject to further orders in this petition.

14. In the meantime, the MoHFW shall file an affidavit placing on record its stand

in respect of the equivalence of the Petitioners' courses

on or before 3rd May, 2021. The National Medical Commission and CPS Mumbai are also permitted to file their affidavits on or before 3rd

May, 2021.â??

7. Subsequently, W.P.(C) 4628/2021 and W.P.(C) 4781/2021 were filed by various other doctors, who are similarly placed. W.P.(C) 4628/2021 was

preferred by 53 doctors and W.P.(C) 4781/2021 was preferred by a further 16 doctors. In these writ petitions as well, directions, similar to the ones

passed in W.P.(C) 4252/2021 were passed on 13th April, 2021 and 16th April, 2021, respectively. On 19th April, 2021, another connected matter,

W.P.(C) 4820/2021 was taken up, however, since none appeared for the four Petitioner-doctors, the matter was simply adjourned to today's date.

8. Today, affidavits have been received on behalf of CPS Mumbai, the NMC as also the Union of India. There was a delay in filing the affidavit by

Union of India as it is stated that the officers concerned were not available due to certain medical issues. NBE has filed a short reply. The NMC has

also emailed a copy of its letter dated 31st March, 2021, by which the NMC has strongly recommended to the MoHFW that it did not find any merit in

the request of the Hand Holding Committee to recognise 14 courses offered by CPS, Mumbai and in fact, recommended denotification of the

qualifications of CPS Mumbai from the schedules of the Indian Medical Council Act, 1956. The said letter is taken on record.

9. The stand of the NBE is that till the time the equivalence of the diplomas is confirmed by the UOI, the Petitioners and other similarly placed diploma

holders cannot be permitted to appear in the examination.

10. The main issue is in respect of recognition and equivalence of the diplomas awarded by the CPS, Mumbai. Insofar as recognition is concerned, the

diplomas are recognised under the IMC Act, for the purposes of practice. However, insofar as equivalence is concerned the stand of the NMC is at

variance with the stand of the UOI.

11. On behalf of the UOI, the affidavits filed in all the three petitions i.e., W.P.(C) 4628/2021, W.P.(C) 4781/2021 and W.P.(C) 4252/202, have been

deposed by Shri Amit Vishwas, the Under Secretary to the Ministry of Health and Family Welfare (hereinafter, â??MoHFWâ?). The said affidavit,

though not signed and attested, has been submitted by Mr. T.P. Singh, Id.

Counsel for the Union of India to the Court Master. He undertakes that the signed affidavit would be emailed to the Registry, along with all the relevant annexures, on or before 15th May, 2021. The said affidavit on behalf of the UOI, sworn by the Under Secretary, may be accepted by the Registry, if it is digitally signed and physical signatures are dispensed with in the currently prevalent pandemic conditions.

12. The affidavits filed in all petitions are almost identical. The affidavit sets out the history in respect of CPS Mumbai and various qualifications awarded by the said institution. Without going into the entire history, it is sufficient to record that it is stated that a Committee was constituted on 5th August, 2016 to give a report in respect of various courses and recommendations for recognition of the courses. The affidavit gives details of the various earlier courses that were recognised, de-recognised and the final position as it stands today.

13. It is submitted that in pursuant to the said decision, the answering respondent vide notification dated 17.10.2017 included 39

Diploma courses in the First Schedule of the IMC Act, 1956 with the following conditions:-

i) All the admissions should be through NEET PG and centralized counselling and as per Government policy time to time.

ii) The CPS qualifications shall not be treated as a recognized medical qualification for the purpose of teaching.

iii) Further, any postgraduate course to be run by the CPS shall be with the prior approval of this Ministry subject to fulfilment of

stipulations prescribed on the lines of Minimum Standard Requirement Regulations of MCI.

14. It is submitted after considering a letter dated 02.11.2017 received from the then MCI wherein certain observations were made in

respect of the notification dated 17.10.2017, it was decided to keep only those courses of CPS, Mumbai running since inception of the IMC

Act, 1956 and were earlier deleted vide notification dated 02.12.2009 and omit all the remaining qualifications from the First Schedule of

the IMC Act, 1956. Accordingly, the answering respondent vide notification dated 22.01.2018 deleted the medical qualifications granted by

College of Physicians and Surgeons, Mumbai in 36 disciplines from the Schedule I

of the IMC Act, 1956 which were previously inserted

vide notification dated 17.10.2017 and inserted the medical qualifications granted by College of Physicians and Surgeons, Mumbai in 7

disciplines in the Schedule I of the IMC Act, 1956. A copy of the notification dated 22.01.2018 is at Annexure P-II of Writ Petition.

15. It is submitted that as a result of the position explained above, the following qualifications awarded by the CPS, Mumbai are recognized

medical qualifications for the purposes of the erstwhile IMC Act, 1956 and are also recognized medical qualifications for purposes of the

NMC Act, 2019 in terms of section 35(8) of the NMC Act, 2019:

1. DGO - this shall be recognized medical qualification when granted by the College of Physicians and Surgeons, Mumbai on or after

December 2009.

2. DCH - this shall be recognized medical qualification when granted by the College of Physicians and Surgeons, Mumbai on or after

December 2009.

3. DPB - this shall be recognized medical qualification when granted by the College of Physicians and Surgeons, Mumbai on or after

December 2009.

4. M.C.P.S. - This qualifications shall be recognized medical qualifications under the Schedule I of the IMC Act, 1956 only when granted

after the 30th April, 1944.

5. F.C.P.S. (Med.) - This qualifications shall be recognized medical qualifications under the Schedule I of the IMC Act, 1956 only when

granted after the 30th April, 1954.

6. F.C.P.S. (Path.) - This qualifications shall be recognized medical qualifications under the Schedule I of the IMC Act, 1956 only when

granted after the 30th April, 1954.

7. F.C.P.S. (Surg.) - This qualifications shall be recognized medical qualifications under the Schedule I of the IMC Act, 1956 only when

granted after the 30th April, 1954.

8. F.C.P.S. (Derm.) - This qualifications shall be recognized medical qualifications under the Schedule I of the IMC Act, 1956 only when

granted after the 30th April, 1954.

9. F.C.P.S. (Mid. & Gyn.) â?" This qualifications shall be recognized medical qualifications the Schedule I of the IMC Act, 1956 when they are held by the persons holding any other medical qualification specified in this Schedule.

10. F.C.P.S. (Ophth.) â?" This qualifications shall be recognized medical qualifications the Schedule I of the IMC Act, 1956 when they are held by the persons holding any other medical qualification specified in this Schedule.

16. It is submitted that respondent No. 3 vide letter dated 16.09.2020 and 06.04.2021 had written to the answering respondent with regard to the equivalence of the Diploma and Fellowship qualifications awarded by the CPS, Mumbai with the counterpart MD/MS or other Diploma qualifications.

17. It is submitted that the answering respondent vide letter dated 30.04.2021 conveyed the following to the respondent No. 3 â?" National

Board of Examinations:

i) The DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS (Derm.), FCPS (Mid. & Gyn.) and FCPS (Ophth.) are the only recognized CPS courses at present.

ii) The aforementioned FCPS qualifications awarded by the CPS, Mumbai are recognized medical qualifications for the purposes of the erstwhile Indian Medical Council Act, 1956 and also for the purposes of the National Medical Commission Act, 2019. These qualifications are registrable qualification for practice, however, the same are not equivalent to either MD or MS courses.

iii) The Diploma qualifications DPB, DGO and DCH - awarded by the CPS, Mumbai are equivalent to their corresponding other recognized Diploma qualifications.

A copy of the letter dated 30.04.2021 is at Annexure R-II.â?"

13. Along with the affidavit, the Union of India has also placed on record the letter dated 30th April, 2021, in respect of the equivalence of qualifications awarded by CPS Mumbai. The said letter reads as under:

â?"To,

The Executive Director

National Board of Examinations

Medical Enclave, Ansari Nagar,

Ring Road, New Delhi-110029.

Sub: Equivalence of CPS qualifications to MD/MS/PG Diploma qualifications - reg.
Sir,

I am directed to refer to letters No.NBE/EDO/2020/429 dated 16.09.2020 and No.NBE/EDO/2021/2012 dated 06.04.2021 on the subject

mentioned above and to say that the matter of equivalence of CPS qualifications to MD/MS/PG Diploma qualifications has been examined

in the Ministry and the following is hereby conveyed:

i. The DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path.), FCPS (Surg.), FCPS (Derm.), FCPS (Mid. & Gyn.) and FCPS (Ophth.) are the

only recognized CPS courses at present.

ii. The aforementioned FCPS qualifications awarded by the CPS, Mumbai are recognized medical qualifications for the purpose of the

erstwhile Indian Medical Council Act, 1956 and also for the purpose of the National Medical Commission Act, 2019. These qualifications

are registrable qualifications for practice, however, the same are not equivalent to either MD or MS courses.

iii. The Diploma qualifications DPB, DGO and DCH - awarded by the CPS, Mumbai are equivalent to their corresponding other recognized

Diploma qualifications.

14. As per the above mentioned letter and affidavit placed on record, the diploma qualifications awarded by CPS Mumbai, being Diploma in Pathology

& Bacteriology (hereinafter, 'DPB'), Diploma in Gynaecology & Obstetrics (hereinafter, 'DGO') and Diploma in Child Health (hereinafter,

'DCH') are stated to be recognized and equivalent to their corresponding other recognised diploma qualifications. The affidavit has, therefore,

concluded that the Petitioners, who possess the recognized diploma qualifications, would be entitled to appear in the DNB-PDCET, 2021 to be

conducted by the NBE.

15. Considering the above stand of the Union of India and the MoHFW, all the Petitioners, who possess the qualifications of DPB, DGO and DCH,

would be entitled to appear for the DNB-PDCET, 2021. The embargo imposed in

clause 4.8 of the NBE's Information Bulletin would no longer be applicable, in view of the stand of the UOI.

16. Mr. Kirtiman Singh, Id. CGSC appearing for the NBE, submits that the examination was originally to be conducted on 9th May, 2021. However, owing to the spread of the Covid-19 pandemic, the same has been postponed and no specific date has been fixed for the conduct of the said examination.

17. Pursuant to the orders passed by this Court, several of the Petitioners had either applied or were permitted to apply for the DNB-PDCET, 2021.

Subject to the verification of their applications, all eligible Petitioners would now be permitted to appear in the DNB-PDCET, 2021, as and when the date for the same is notified, in accordance with the Rules and Regulations of the NBE.

18. Considering that there could be other candidates who could not apply for the DNB-PDCET, 2021 and the fact that the examination is now postponed, a circular may be issued by the NBE extending the deadline for those candidates who possess the diplomas from CPS Mumbai, which are recognized and equivalent, to make an application to appear in the DNB-PDCET, 2021.

19. The petitions are disposed of in the above terms. All pending applications are also disposed of.