
(2000) 01 DEL CK 0041

In the Delhi High Court

Case No : L.P.A. No"s. 508/98, 305/98, 306/98, 133/99, 270/99, 271/99, 82 to 89/99, C.Ws. 5950/98, 6309/98, 6371/98, 6373/98, 6374/98, 6375/98, 57/99 and 402/99

Medical Council of India

APPELLANT

Vs

Mr. Tarun Goel and Others

RESPONDENT

Date of Decision : 13-01-2000

Acts Referred:

Citation : (2000) 2 AD 288 : AIR 2000 Delhi 128 : (2000) 83 DLT 499 : (2000) 52 DRJ 455

Hon'ble Judges : Surinder Kumar Aggarwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Kirti N. Raval and Mr. Navin Prakash, for the Appellant; Ms. Gita Mittal, Ms. Arti Bansal and Ms. Shobhna Taklar, for the Respondent

Judgement

Devinder Gupta, J.—This batch of Letters Patent Appeals and writ petitions were heard together and common arguments were addressed. As such it will be but appropriate to dispose of the same by a common order.

2. L.P.A. No. 508/98 arises out of an order passed on 18.9.1998 by learned Single Judge allowing writ petition (C.W. No. 3599/97) filed by the respondents holding the decision of the appellant dated 17.10.1996 and 23.10.1996, insofar as it require the respondents to undergo one year further internship/training in India, after successful completion of degree course as a condition precedent for enrolment in the State Register and for grant of permanent registration as illegal and contrary to the provisions of the Medical Council Act thereby directing the appellant to grant enrolment and registration to the respondents subject to their furnishing and, thereafter, verification of the original degrees/certificates of having successfully completed the degree course, which included internship and practical training in the 6th year.

3. L.P.A. Nos. 305 and 306 of 1998 arise out of common judgment of learned Single Judge dated 22.4.1998 allowing the respondents writ petitions No.

4591/98 and 4743/98 respectively and thereby holding that the respondents fulfill all the basic requirements of Section 13(3) of the Indian Medical Council Act, 1956 (for short "the Act") and are accordingly entitled to registration with the Indian Medical Council. Consequently, the appellant was directed to grant registration to the respondents forthwith.

4. L.P.A. Nos. 270 and 271 of 1998 arise out of a common order dismissing Review Application Nos. 57 and 7228 of 1998 filed by the appellants seeking review of the aforementioned judgment dated 22.4.1998 (in C.W. 4743/98 and CW. 4591/98).

5. Other appeals (L.P. As. 82/99, 83/99, 84/99, 85/99, 86/99, 87/99, 88/99, 89/99 and 133/99 are against separate interim orders passed by learned Single Judge that the respective writ petitions be posted for decision along with L.P.A. No. 306/98 and in the meanwhile directing to grant provisional registration to the respondents u/s 25 of the Act subject to final decision in the writ petitions observing that if the writ petitions filed by the respondents are ultimately dismissed, registration granted pursuant to the impugned orders will not confer any right on the respondents. Along with these appeals, the writ petitions No. 5544/98, 5950/98, 6309/98, 6371/98, 6373/98, 6374/98, 6375/98, 57/99 and 402/99 are also posted for consideration wherein same prayer has been made directing the appellant to register the respondents u/s 13(3) of the Act and quashing the order passed by the appellant on 21.3.1997.

6. Arguments were heard at length. We formally admit the appeals and issue Rule D.B. in writ petitions, wherever such an order has not been passed.

7. In order to appreciate submissions made at the Bar, it will be necessary to refer to the documents and some of the provisions of the Act.

8. The Indian Medical Council Act, 1956 was enacted with a view to provide for the reconstitution of the Medical Council of India and maintenance of a Medical Registrar for India and for matters connected therewith. The Medical Council of India is constituted u/s 3 of the Act, which by virtue of Section 6 is a body corporate having perpetual succession and a common seal capable of suing and being sued. Section 11 of the Act makes a provision with respect to recognition of medical qualifications granted by Universities or medical institutions in India. The First Schedule include therein medical qualifications, which are granted by any University or Medical Institution in India, which by virtue of Section 11 shall be a recognised medical qualification for the purpose of the Act. Section 12 deals with recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Medical qualifications granted by medical institutions outside India, which are included in the Second schedule are recognised medical qualifications for the purpose of the Act. Section 13 of the Act is a provision with respect to recognition of Medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.

9. Medical qualifications granted by those medical institutions located in India, which are not included in the First Schedule but are included in Para I of the Third Schedule, by virtue of sub-section (1) of Section 13 of the Act shall also be recognised medical qualifications for the purpose of the Act subject to the conditions mentioned in sub-section (2) of Section 13. Sub-section (3) of Section 13 is the relevant provision with which we are concerned, by virtue of which the medical qualifications granted by medical institutions outside India and, which are included in Part II of the Third Schedule are also recognised medical qualifications for the purpose of the Act, subject to the conditions laid therein.

Sub-Section (3) of Section 13 of the reads :

"13. xxx xxx xxx (i) xxx xxx xxx (2) xxx xxx xxx

(3) The medical qualifications granted by medical institutions outside India, which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of the Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country, he has undergone such practical training as may be prescribed."

(4) xxx xxx xxx (5) xxx xxx xxx

10. Section 15 of the Act confers a right on persons possessing qualifications in the Schedules to be enrolled. It reads :-

"(1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register -

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority :

(b) shall practice medicine in any State :

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner :

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert u/s 45 of the Indian Evidence Act, 1872 on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall

be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

11. Section 21 requires Medical Council of India to maintain a register, known as the Indian Medical Register containing names of all persons, who are enrolled on any State Medical Register and possesses any of the recognised medical qualifications. Section 27 of the Act confers privilege on such persons, whose names are entered in the Indian Medical Register to practice, as a medical practitioner in any part of India.

12. Sub-section (1) of Section 25 deals with provisional registration in State Medical Register to enable citizens of India possessing a medical qualifications granted by medical institutions outside India to practice medicine in an approved institution for purpose of training. It says :-

"A citizen of India possessing a medical qualification granted by a medical institution outside India included in Part II of the Third Schedule, who is required to undergo practical training as prescribed under sub-section (3) of Section 13, shall, on production of proper evidence that he has been selected for such practical training in an approved institution, be entitled to be registered provisionally in a State Medical Register and shall be entitled to practice medicine in the approved institution for the purposes of such training and for no other purpose."

13. It is an admitted case that on 27.6.1986 a memorandum of understanding was arrived at between the Council and the erstwhile U.S.S.R. whereby the then Government of U.S.S.R. offered to admit 50 students in their medical institutions, recommended/sponsored by the Council/Government of India. Pursuant to the said Memorandum of Understanding between the Medical Council of India and the Soviet Ministry of Higher and Secondary Specialised Education, the Council started sending Indian students to study M.D. Degree (General Physicians) Course in General Medicines in the medical institutions in U.S.S.R., whose qualifications were recognised and included in Part II of the Third Schedule to the Act, which was considered equivalent to M.B.B.S. degree of Indian Universities. Indian students both for undergraduate and postgraduate medical courses were being admitted to various medical institutions in U.S.S.R. since 1987 under the said Scheme. In addition to candidates sent by the appellant, certain private agencies had also been permitted to send eligible candidates for pursuing the aforementioned medical courses.

14. Pursuant to the above Memorandum of Understanding, the Council had during the period 1987-90 sponsored 174 Indian students to study undergraduate medical course in recognised medical institutions of erstwhile U.S.S.R. It is the case of appellants that the Council had not sponsored students since 1991 under the said Memorandum of Understanding since the said Memorandum of Understanding had lost its sanctity and lapsed with the disintegration of erstwhile U.S.S.R. In addition to candidates sent by the Council,

certain private agencies who had also been permitted to send eligible candidates for pursuing the aforesaid medical course and numerous students joined medical institutions in U.S.S.R. The course and qualification being given to students sent by the Council and the private agencies was identical.

15. In 1990 Bulletin of Information was published by the appellant, in respect of the admission, which amongst other information stated :-

"In pursuance of a Memorandum of Understanding reached between the Medical Council of India and the Soviet Ministry of Higher and Secondary Specialised Education, the Medical Council of India after holding a competitive entrance examination/ interview will select 30 Indian Students for undergraduate medical education and 50 for postgraduate medical education in medical institutions in USSR. There are 83 medical higher educational institutions in the Soviet Union. In addition, medical faculties of 9 Universities impart medical training courses for doctors. The Indian students will be sent to study M.D. degree General Physician course in General Medicine in the medical institutions in USSR, whose qualifications are recognised and included in Part II of the Third Schedule to the Indian Medical Council Act, 1956 and is considered equivalent to M.B.B.S. degree of Indian Universities.

Indian students for both undergraduate and postgraduate medical course were being admitted to various medical institutions in USSR since 1987 under the Scheme.

UNDERGRADUATE MEDICAL COURSE

The duration of the M.D. degree (under graduate) course is for seven years including one year of internship/training, which can be done in an approved hospital in India. This includes first year study in preparatory faculties including Russian language."

16. In August, 1991 public notice in various newspapers was got published by the appellant inviting applications for the September, 1991 course. Respondents 1 and 2 in L.P.A. 508/98 applied for M.D. Physician course in Dagestan State Medical Institute and respondents 3 to 7 in the Minsk State Medical Institution respectively. On 8.10.1991 the appellant Council returned the application of respondent No. 1 on the sole ground that only 10 seats were sanctioned for undergraduate course and the appellant had decided not to send any student for undergraduate course. Respondents thereafter applied for and got processed their applications for admission to the recognised courses conducted by the Universities in U.S.S.R. through private agencies. During December, 1991 there was break up of the erstwhile U.S.S.R. into Russia and other Common independent States (CIS). Respondent No. 1 made an application to appellant seeking migration to a college in India. Through letter dated 30.12.1993, the prayer for migration was declined on the ground that respondent No. 1 had not been sponsored by the appellant. It was the case of respondent that an illegal, unwarranted and arbitrary discrimination between candidates, who had been

sponsored by the appellant to various medical colleges of U.S.S.R. and the candidates who had been sent through private agencies was being practiced. The appellant was even permitting migration of students, who had completed the first year course in the recognised medical institutions in India as also to those who had been sponsored by it but in respect of candidates who had gone through private agencies and were not sponsored by the appellant, the same facility was not being provided. Respondent No. 1 sought information as to the recognition status of Dagestan State Medical Institute and of the fact that whether he would be permitted to do internship training in India or not and also for Registration under the Act on obtaining degree. Respondents were informed of various orders and of the fact that the appellant was considering migration of only those students sponsored by the appellant, who were studying in recognised medical institutions in U.S.S.R., to recognised medical institutions in India. Migration of respondent No. 1 was regretted on the ground that he had not been sponsored by the appellant.

17. Before stating other facts, we will refer to some of the orders decisions of the appellant, which are subject matter of the present controversy.

18. On 13.7.1993 the Executive Committee of the appellant Council decided that students sponsored by the Council can do 9 months of internship in India while they are in the 6th year of the course. Thereafter they may go back to their parent institutions and take the final examination. After passing the examinations, they can come back to India and do the remaining three months of internship.

19. The Executive Committee of the appellant on 26.7.1994 took a decision to extend benefit of the decision dated 13.7.1993 to students sent through private agencies also but subject to the condition that such students must fulfill the eligible criteria, as applicable to the candidates sponsored by the Council. The decisions of the Executive Committee were placed before the Council, which on 25.8.1994 accepted the recommendations saying :-

"The Executive Committee deliberated on the recommendations of the Sub-Committee regarding granting temporary/permanent registration to Indian students graduating from the recognised medical institutions of erstwhile USSR. The Executive Committee also considered its earlier decision in the matter and finally decided as under :-

The Executive Committee decided to permit MCI sponsored candidates to undergo internship training in India after completing 5th year medical course in the country provided they submit provisional degree certificate in original by the Dean for Foreign students, duly certified and attested by the Indian Embassy at Moscow or the Russian Embassy at Delhi and also no objection certificate from the authorities concerned to do internship training in India.

The students are permitted to undergo 9 months of their practical training in clinical areas designated by them as "Subordinator" in recognised teaching

hospitals in India in part fulfillment of the requirements of the Russian Medical Institutions which award their degree after they duly register themselves with the State Medical Council/Medical Council of India provisionally for doing the internship training in India. After obtaining the degree, the candidate may come back and register again provisionally with the respective State Medical Council/Medical Council of India for the remaining period of 3 months internship to complete one year of internship as prescribed already in India. The candidates are eligible to come back for provisional registration to complete internship training for the remaining period, only after they pass the examination conducted by the concerned institutions in erstwhile USSR as required under law of those institutions of that country awarding the degree and submit the degree to the Council.

The Executive Committee also noted receipt of number of representations from the students studying undergraduate medical course in different recognised medical colleges/institutions of erstwhile USSR who were sponsored by private agencies regarding granting permission to undergo compulsory rotating internship in India. The Committee decided to allow such candidates also to avail the same facility as permitted to the MCD sponsored candidates. However, these candidates will have to satisfy the Medical Council of India with regard to fulfillment of eligibility criteria for being permitted to undergraduate medical course as applicable to the students sponsored by the Council.

Regarding permanent registration, the Executive Committee accepted the recommendations of the Sub-Committee which is as under :

In regard to permanent registration to the holders of M.D. (Physician) in General Medicine awarded by medical institutions in erstwhile USSR u/s 13(3) of the I.M.C. Act, 1956, the Committee feels that as per provisions of the I.M.C. Act, 1956, persons holding a degree included in the Schedule are entitled to permanent registration in the State/Central Medical Council."

20. It is the appellant's case that in June, 1995 a delegation headed by the then President of the Council visited various medical colleges of Russia to assess the standards of medical education and internship pattern. On 18.7.1995 the Executive Committee decided to withdraw the faculty granted by the earlier decision of 13.7.1993 and 26.7.1994 and to grant provisional registration to do one year internship in India after completion of 6th year course. The decision of 18.7.1995 was to be implemented with effect from 1.1.1996. The relevant extract of the minutes of the meeting of the Executive Council held on 18.7.1995 reads :-

"Permission to undergo compulsory rotating internship in India to Indian students after completion of 5th year M.D. (Physician) course in erstwhile USSR and permanent registration to the holders of M.D. (Physician) degree in General Medicine awarded by medical institutions in erstwhile USSR u/s. 13(3) of the I.M.C. Act, 1956 along with a certificate to the fact that the candidate has

completed internship in the institution-Review/modification of the earlier decision.

Read : The matter in light of earlier decision taken by the Council permitting Indian students to undergo compulsory rotating internship in India after competition of 5th year M.D. (Physician) course in erstwhile USSR and permanent registration to the holders of M.D. (Physician) degree in General Medicine awarded by medical institutions in erstwhile USSR u/s. 13(3) of the Indian Medical Council Act, 1956.

The Executive Committee noted its earlier recommendation on this matter on 26.7.1994, duly approved by the council at its meeting held on 25.8.1994 :-

"The Executive Committee decided to permit MCD sponsored candidates to undergo internship training in India after completing 5th year medical course in the country provided they submit provisional degree certificate in original by the Dean for Foreign students, duly certified and attested by the Indian Embassy at Moscow or the Russian Embassy at Delhi and also no objection certificate from the authorities concerned to do internship training in India.

The students are permitted to undergo 9 months of their practical training in clinical areas designated by them as "Subordinator" in recognised teaching hospitals in India in part fulfillment of the requirements of the Russian medical institutions which award their degree after they duly register themselves with the State Medical Council/Medical Council of India provisionally for doing the internship training in India. After obtaining the degree, the candidate may come back and register again provisionally with the respective State Medical Council/Medical Council of India for the remaining period of 3 months internship to complete one year of internship as prescribed already in India. The candidates are eligible to come back for provisional registration to complete internship training for the remaining period, only after they pass the examination conducted by the concerned institutions in erstwhile USSR as required under law of those institutions of that country awarding the degree and submit the degree to the Council."

The Committee considered the report submitted by the President, who was the leader of the visiting delegation of the HRD Ministry, which visited various medical colleges in Russia during June, 1995 to assess the standards of medical education, duration of the undergraduate course and internship pattern. It was noted that the "medical course" in Russia is of 6 years duration after one year of preparatory course. The degree of M.D. (Physician) is granted after finishing this 1 year + 6 year training, which enables a graduate to have restricted right to practice (under supervision only). Only after a further specialization can a doctor practice independently.

In view of the facts which have now been revealed, the Committee reviewed its earlier decision and decided not to grant provisional registration to students studying in Russia for doing internship in India unless the candidate has obtained the requisite degree from Russia at the end of the medical course, as per

provisions of Section 13(3) of the Indian Medical Council Act, 1956. The Committee further decided that permanent registration may be granted to the candidates only after they complete a further period of one year internship training in India/Russia (1+6+1 year) as per provisions of the said Act.

This decision will be applicable from 1st January, 1996. All authorities concerned be informed accordingly including the Indian Embassy in Russia to bring it to the notice of all the students concerned."

On 10.5.1996 another decision was taken by the Executive Committee of the appellant that status quo as per decision of 26.7.1994 be maintained and that decision of 18.7.1994 would apply only to those students who had taken admission after 1.1.1995. Relevant extract of the minutes of the meeting of the Executive Committee of the appellant held on 10.5.1996 reads :-

"Indian students studying in erstwhile USSR medical institutions permission for undergoing internship training in India after 5th year medical course and/or permitting them permanent registration after obtaining the medical qualification.

Read : the various representations received from the Indian students studying in erstwhile USSR with regard to permission to undergo internship training in India after 5th year medical course and/or permitting them permanent registration after obtaining the medical qualifications.

The Executive Committee taking into consideration the representations received from the various sectors decided to review its earlier decision taken at its meeting held on 18.7.95 regarding granting permission to undergo internship training in India by Indian students studying in erstwhile USSR after 5th year medical course and/or permitting them permanent registration after obtaining the qualification.

Taking a sympathetic view for those students who are already undergoing the M.D. (General Physician) course in the recognised institutions of erstwhile USSR, the Committee decided to maintain status quo for them as per its decision taken at its meeting held on 26.7.94.

The Executive Committee was of the view that the decision taken at its meeting held on 18.7.95 would be made applicable to the students who have taken admission into already recognised institution of the erstwhile USSR after 1.1.1995."

21. There was yet another modification to decision dated 18.7.1995 by a subsequent decision dated 17.10.1996 but to the extent that students admitted up to 1.1.1991, namely, i.e. completing their medical degree by 1.1.1997 will be permitted for the internship as against the earlier decision permitting the students admitted up to 1.1.1995. This decision is the cause of major controversy and it reads :-

"Internship and provisional/permanent registration for Indian Nationals passing

out from recognised medical institutions in erstwhile USSR.

Read : The Complete details of the matter along with the report of the Sub Committee.

The Executive Committee after detailed discussion on Sub Committee's report approved the same and decided to permit internship to graduates from recognised medical institutes in erstwhile USSR as included in the Schedules to the I.M.C. Act, 1956.

The Committee further decided that the students admitted up to 1.1.1991 only (i.e. completing their medical degree by 1.1.1997) will be permitted for the internship as against the earlier decision permitting the students admitted up to 1.1.1995. The Committee also decided that provisional registration to do internship in India henceforth will be permitted only after completing full medical degree course of 6 years duration: as against earlier decision permitting the students to do internship during the 6th year degree course in erstwhile USSR; provided they meet the other eligibility criteria and provisions of relevant sections of the I.M.C. Act 1956 in this regard.

This information may be circulated immediately to all the concerned for their information."

22. The respondents in L.P.A. 508/98 on 1.1.1997 filed CW. 3599/97 praying for quashing the decision dated 17.10.1996 as illegal, arbitrary, unjust and discriminatory, based on no rationale whatsoever and violative of Article 14 of the Constitution. Further direction was sought against the appellant to grant to the respondents facility of undergoing required practical training in Clinical areas designated by the recognised Medical Institutions in the erstwhile USSR designated as "Subordinator" in recognised Teaching Hospitals in India in part fulfillment of the requirement of the Medical Institutions awarding the degree. Another direction sought was to direct the appellant that upon obtaining the degree, the respondents be permitted to register provisionally with the respective State Medical Council for completion of any remaining period of internship, to complete the one year internship prescribed by institutions and thereafter to grant permanent registration to the candidates, who have successfully completed their course and obtained their degrees from recognised Medical Institutions. The respondents also sought direction for declaring that the decision dated 26.7.1994 of the appellant holds the field and is valid and binding on the appellant.

23. This petition was contested by the appellant. The appellant's case is that the writ petition was heard by learned Single Judge at length and judgment was reserved. In the meanwhile, another learned Single Judge decided two writ petitions (C.W. No. 4591/98 and C.W. 4743/98) on 22.4.1998 concerning registration of Indian students having obtained degree from medical institutions of erstwhile U.S.S.R. In May 1998 the respondents filed miscellaneous application to bring on record the aforementioned two decisions of learned Single Judge.

Learned Single Judge, on 7.8.1998 after hearing the matter again, in the light of the aforementioned decisions dated 22.4.1998 of another learned Single Judge and nothing down the contention made on behalf of learned counsel for the respondents that respondents had during pendency of the writ petition completed their 6th year of course again reserved judgment. The appellant's case is that by the impugned order dated 18.9.1998 learned Single Judge did not deal with the question as to whether the respondents were liable to do 9 months internship after completion of 5th year. In view of the fact that the respondents had stated that they had completed their 6th year course, learned Single Judge held that the respondents were not required to undergo further practical training after obtaining medical qualifications.

24. Learned counsel for the appellant contended that judgment of learned Single Judge dated 18.9.1998 in C.W. No. 3599/79 on the question of interpretation of sub-section (3) of Section 13 is contrary to and is in conflict with earlier judgment pronounced by learned another Single Judge on 22.4.1998 in C.W. 4743/98. It is urged that Sub-section (3) of Section 13 require that person should undergo practical training after obtaining the requisite qualifications. The words "after obtaining requisite qualifications" have to be construed in harmony with the words "any practical training so as to mean that the candidate, who has not undergone any practical training after obtaining the requisite qualifications/degree has to undergo further training as may be required." Sub-section (3) of Section 13 does not include the training undergone during the course of obtaining the degree but it is the training, which has to be undergone on obtaining qualification. Entitlement to be enrolled would be of the candidate, who undergone training, in India after obtaining the recognised and requisite qualifications in the foreign country and if he has not undergone practical training in foreign country after obtaining the qualifications, the Council is empowered u/s 13(3) of the Act to prescribe and require that internship/practical training in India would be permitted after completion of the 6th year course and permanent registration would be granted only after further training.

25. It is the appellant's case that learned Single Judge has completely ignored the provisions of sub-section (1) of Section 25 wherein it is the sole prerogative of the Council of Scrutinize each candidate on production of proper evidence to assess whether a candidate has or has not completed practical training out side India. Provisional opinion of the Council under sub-section (1) of Section 25 as an expert body is that the 6th year course undertaken by the contesting respondent does not include practical training. Council is empowered u/s 33 of the Act to make regulations with regard to the period of studies and practical training to be undertaking. Even in U.S.S.R. (C.I.S. countries) candidates having degree course of 1+6th years have only a restricted right to practice the profession and it is only after further training that candidate could independently practice. In the fixation of cut off date sole discretion vests with the Council.

26. The challenge to the decision of learned Single Judge dated 22.4.1998 is on

the interpretation of Sections 13, 15 and 25 by raising the following questions of law :-

"Whether the Medical Council of India, in discharge of its functions and duties under the provisions of the Indian Medical Council Act, 1956 and in order to maintain the standards of medical profession in the country, lay down a condition that for the purposes of getting registration, provisional or permanent, under the provisions of the said Act of 1956, Indian students possessing recognised foreign medical degree must also fulfill the eligibility criteria laid down by the Council for admissions into undergraduate medical course of this country?

27. The sole contention of the appellant is that a decision was taken by the appellant not to grant registration to Indian students holding medical degree from recognised medical institutions of erstwhile U.S.S.R. unless they fulfill the eligibility criteria laid down by the Court for M.B.B.S. course and as a consequence thereof provisional registration was denied to the respondent. The decision of learned Single Judge dismissing the review applications of the appellant seeking review of the judgment dated 22.4.1998 is also under challenge on the ground that learned Single Judge has given contradictory interpretation of Section 13(3) of the Act in the two decisions by ignoring the supervisory power of the appellant in regard to standards of medical education and profession in the country and has erroneously held that once a student obtains medical qualifications from a recognised medical institute after completing the course, it is of no consequence whether he had undergone a pre-medical test or admission test. The argument is that in matters pertaining to minimum eligibility criteria, duration of course, necessity of undergoing practical training after obtaining degree, medical qualifications etc. are matters in which Court should not interfere and the same be left to the experts of the field.

28. The challenge in the other appeals by the appellant to the interim order passed by learned Single Judge is on the ground that it was submitted before learned Single Judge that the appellant is well within its jurisdiction in not permitting the registration to candidates, who did not fulfill the eligibility criteria on their admission. The respondents were not entitled for any interim order on the basis of the decision of learned Single Judge in Meenakshi Vs. Union of India and Another, since operation of the judgment of learned Single Judge had been ordered to be stayed by a Division Bench by virtue of order passed on 5.2.1999 in LPA No. 306/98. Learned Single Judge while directing writ petition also to be heard with L.P.A. 306/98 granted interim order in favor of respondent No. 1 by directing the appellant to grant provisional registration within a period of two weeks.

29. The main submission on behalf of learned counsel for the respondents in L.P.A. 508/98 has been that decision dated 17.10.1996 was arbitrary. There was no material or basis for decision except that the basis for the last batch was sent by the appellant on 1.1.1991. There has been complete non-application of mind. The decision is based on irrelevant consideration. It was for the appellant to have

produced material and disclosed the reason why the date of enforcement of decision dated 18.7.1995 was being changed in its applicability with effect from January, 1996. The three decisions dated 18.7.1995, 10.5.1996 and 17.10.1976 are based on the alleged inspection, alleged to have been carried out in June, 1995. There is no rational basis or justification for fixing the cut of dates. In the absence of any material, picking up an arbitrary date is ultra virus of the provisions of Section 13 of the Act and is also vocative of Article 14 of the Constitution of India. There is no practical training prescribed under the Act for the purpose of applicability of Sub-section (3) of Section 13 or Sub-section (1) of Section 25 of the Act. Practical training prescribed would be the one which is prescribed by regulations made by the Council. Decision dated 17.10.1996 is not a regulation framed u/s 33 of the Act by the Council but is in the nature of an administrative order or decision. The appellant has no power or authority to issue administrative instructions or directions other than regulations framed u/s 33 of the Act. Having regard to the Scheme and purpose of the Act, the appellant has no jurisdiction, power or authority to refuse to register a candidate possessed of recognised medical qualification and satisfying the provisions of Sub-section (3) of Section 13 of the Act. The appellant is empowered only to prescribe minimum standards of medical education for Universities or Institutions in India. It has no power to prescribe minimum standards of medical education for Universities or Institutions outside India. The appellant has also no power or authority or jurisdiction to impose requirement of an additional year of internship after a candidate has acquired requisite qualification as a pre-requisite for registration. The appellant is empowered to prescribe practical training only if a candidate has not undergone only practical training in that country only by regulation framed in compliance with the provisions of Section 33 of the Act. Once a candidate has undergone training and has been granted the recognised medical qualification, the candidate has a vested right to enrolment u/s 15 of the Act. All the decisions of the appellant are post disintegration of U.S.S.R. The appellant has deliberately withheld complete facts. Copy of letter dated 29.1.1981 has been filed whereas decision of High Court of Bombay reported as *v. Arun H. Bakle Vs. Union of India and Others*, refers to other letters dated 13.2.1981 and 28.2.1981, which appears to be related and part of the same series of correspondence. Letter dated 29.1.1981 is of the pre-recognition period and there is no material placed by the appellant regarding qualifications granted by the institutes in question. The diploma and certificate dated 1980 relied upon by the appellant is also pre-recognition. Neither an inspection of the medical institutions in the instant case has been carried out nor any material has been made available to the Court that on what basis the appellant has taken the impugned decision. Subject and duration of time spent in the course as relied upon by the appellant are of no consequence not only being prior to recognition to the qualification but also strikingly different to the courses completed in June, 1998 by the respondents. Dagestan State Medical Institute was recognised by the appellant on 20.3.1990. Prospectus of the same was released in 1990, which confirm that the duration of medical course in U.S.S.R. is 7 years (1+5+1). Admission of students in medical

course was subject to final approval of Government of U.S.S.R. The appellant has granted permanent registration in 1994, 1995, 1996 and 1997 to U.S.S.R. Degree Holders, who completed their practical training in 6th year in the medical course. There was break down of U.S.S.R. in December, 1991. Irrespective of the fact that the respondents submitted requisite documents qualified successfully the medical course in U.S.S.R. entitling them to permanent registration, the appellant failed to convey about the discrepancy in the documents so submitted by the respondents.

30. Learned Single Judge while allowing writ petitions No. 4743/96 and 4591/96 held that once an institution is recognised then the eligibility criteria for admission also has to be of that institution. In other words, if the Medical Council has recognised an institution in U.S.S.R. in that case eligibility criteria for admission also has to be of that institution in U.S.S.R. and not the eligibility criteria laid down by the Medical Council of India. Review applications were dismissed by learned Single Judge observing that once a student had obtained medical qualifications from a recognised medical institute, after completing the said course, it was of no consequence that whether he had undergone a pre-medical test or admission test. This was not the requirement of clause (3) of Section 13 of the Act. What is envisaged by the said clause is obtaining medical qualification granted by those institutions, which are included in Part II of the Third Schedule. Learned Single Judge also held that when the respondents joined the recognised medical institutes, medical students were required to undergo one year preliminary course in Russian language and after completion of the said course they were required to undergo 6 years of medical education. Old programme was changed in 1995 and a new programme was introduced. Six years course was compressed to 5-1/2 years course. Number of hours in subjects completed by students was kept equivalent to that of 6 years. Therefore, objection of Medical Council that the respondents had undertaken 5-1/2 years medical course only was not justified. Learned Single Judge also observed that as the respondents had started taking internship in India and would be completing the same, it was not necessary to record any finding on the objection whether the internship had or had not been gone into and consequently dismissed the review petition.

31. Learned Single Judge while allowing writ petition No. 3599/97 on perusal of the material placed before him held that respondents had perused regular course of study in a foreign institution. The degree and qualification of the foreign institution was a recognised one falling within Part II of Third Schedule of the Act. The said course of studies includes medical training or internship, as per the requirements of the Rules and Regulations in the foreign country. Duration of the course to which the respondents were admitted was 1+6 years with internship and practical training in the 6th year. The respondents were denied practical training in India and claimed to have undertaken the same in the foreign institute itself. Foreign institute had clarified that respondent No. 1 was entitled to carry out professional service in relation to the qualifications awarded. It was further

held that as long as the qualification of the foreign institution is recognised one, falling within Part II of the Third Schedule of the Act and the said qualification includes practical training or internship as per the Rules and Regulations of the foreign country, it does not lie in the province of Medical Council of India to deny registration and enrolment and claim that further period of one year training must be gone through. Learned Single Judge also held that although U.S.S.R. disintegrated in 1991 but no decision had been taken by the Central Government to de-recognize the medical institutions. Therefore, institutions continued to be lawfully recognised. Eligibility criteria as well as qualifying criteria for their degrees would be that of foreign institutions. As regards fixation of cut off date, taking note of various decisions taken by the Council, learned Single Judge held that frequent changes in the date made in the absence of any subsequent material or data other than the inspection of June, 1995, tends to show that the same is arbitrary and irrational only with a view to give benefit to the last batch sent by the Council and to deny the said benefit to others. Consequently, learned Single Judge held that the appellant's decision requiring the respondents to undergo one year Internship/training in India after successful completion of degree course as a condition precedent for enrolment in the State Register and for grant of permanent registration was illegal and contrary to the provisions of the Act.

32. There cannot be any doubt in the submission made on behalf of the appellant that the Act has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this High Powered Council has also the power to prescribe the minimum standards of medical education. It has also implicit power to put qualification or eligibility standards for admission into medical institutions. There is an over all invigilation by the Medical Council to the standards for entrance for medical courses. But we may add that these provisions in the Act confer power and jurisdiction on the Medical Council of India as an expert body to lay down standards for the purpose of imparting medical education and for maintaining uniform standards within the territorial jurisdiction of India only and not with respect to medical institutions outside the country. Section 12 of the Act deals with recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Section 12 reads :-

"12. Recognition of medical qualifications granted by medical institutions in countries with there is a scheme of reciprocity - (1) The medical qualifications granted by medical institutions outside in India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) The Council may enter into negotiations with the Authority in any country outside India which by the law of such country is entrusted with the maintenance of a register of medical practitioners, for the setting of a scheme of reciprocity for the recognition of medical qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette,

amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

(3) The Central Government, after consultation with the Council, may by notification in the Official Gazette, amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

(4) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any Authority referred to in sub-section (2) and that Authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the Council a report, if any, as to the reasons for any such refusal, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and the provisions of sub-section (2) shall apply to such notification."

33. There is a power vested in the Central Government by virtue of subsection (2) of Section 12 to amend Second Schedule so as to include therein the medical qualification, which the Council has decided should be recognised. Power is also vested in the Central Government after consultation with the Council to amend the Second Schedule by directing that an entry be made therein in respect of any medical qualification declaring that it shall be recognised medical qualification only when granted before a specified date. When such power is vested in the Central Government to make an entry and amend Schedule, there is no manner of doubt that such power also implied by includes the power for de-registration and to order deletion of an entry.

34. Admittedly, as has been rightly noted by learned Single Judge, till date the relevant institutions in U.S.S.R. have not been de-recognized. Therefore, there cannot be any manner of doubt that medical qualifications granted by medical institutions outside India, which are included in Part II of the Third Schedule continue to be recognised medical qualifications for the purpose of the Act. Essential ingredients for enrolment to State Medical Register, as contained in sub-section (3) of Section 13 of the Act are that the person concerned should be : (a) a citizen of India; (b) possessed of medical qualification granted by medical institution on out side India; (c) such medical qualification is included in Part II of the Third Schedule; and (d) has undergone such medical training after obtaining that qualification, as may be required by the Rules and Regulations enforced in that country granting qualification; and (e) in case such practical training after obtaining qualification has not been undergone, the additional requirement is that he should have undergone such practical training, as may be prescribed by the Council.

35. The stand taken on behalf of the appellant that some of the respondents do not fulfill initial eligible criteria, as laid down for admission to M.B.B.S. courses in Medical Colleges in India was turned down by learned Single Judge holding that once a medical institution is recognised and is included in Part II of the Third Schedule, it has to be presumed that all criteria including eligibility criteria has to be of those institutions and not what is prescribed by the appellant Council.

36. It was contented on behalf of the appellant that since supremacy of Medical Council as an expert body for purposes of imparting medical education and for maintenance of uniform standards of medical education vests in the Council, Therefore, there is nothing wrong in the appellant insisting upon the respondents also to satisfy that they process pre-eligible criteria for admission in medical institution in India. This submission is without any force since the Act nowhere empowers the appellant Council to lay down eligibility criteria for admission to medical institutions outside the country. In Medical Council of India Vs. State of Karnataka and Others, also it was held that it is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained and it is the Medical Council, which is the principal body to lay down conditions for recognition of medical colleges within the country.

37. The act of recognition of medical qualifications granted by medical institutions in countries with which there is scheme of reciprocity u/s 12 of the Act is performed by the Central Government on issuance of notification. Jurisdiction is vested in Central Government only to amend Part II of the Third Schedule so as to include or exclude there from any qualification granted by medical institution outside India, which is not included in the Second Schedule and the medical qualifications, which are granted by medical institutions outside India. Similarly, the Central Government by virtue of Clauses (1), (2) and (3) of Section 13 of the Act exercises jurisdiction to include in Part I and Part II of the Third Schedule the medical institutions in India and medical institutions outside India, the medical qualifications which are also to be recognised medical qualification for the purposes of the Act. So long as the Central Government has not exercised its power to exclude a medical qualification granted by a medical institution included in Part II of the Third Schedule, it continues to hold good for the purposes of the Act and for getting registration subject to fulfillment of other conditions contained in clause (3) of Section 13. Neither under clause (3) of Section 13 nor the power conferred u/s 33 of the Act, empowers the Council to insist upon fulfillment of eligibility qualification by candidate possessing medical qualification granted by a medical institution outside India as a condition precedent for getting him registered in the State Medical Register. The reasons assigned by learned Single Judge are wholly justified that so long as the medical qualification of a particular medical institution outside India is included in Part II of the Third Schedule, the eligibility criteria also has to be of that institute, which the respondents fulfill.

38. We have extracted in detail various decisions, which were taken by the Council after disintegration of U.S.S.R. Learned Single Judge had dealt with each one of them in para 23 of the judgment in CW. 3599/97. On a conjoint reading of the decisions, we are of the view that the learned Single Judge was wholly justified in observing that fixation of a cut off date being in the discretion of the delegate is not normally justifiable but frequent changes in the date made in the absence of any subsequent material or data than the inspection of June, 1995 tends to show that the same is arbitrary and irrational and was made only with a view to give benefit to the last batch sent by the appellant Council and to deny the same to the others. It was for no fault of the respondents in having obtained admission to the institutions out side the country. No warning was issued by the appellant at that stage of obtaining admission for the respondents for which the appellant is now insisting upon.

39. A bare reading of sub-section (3) of Section 13 of the Act would show that if a person possessing medical qualification granted by medical institution outside India included in Part II of the Third Schedule has undergone practical training after obtaining qualification, as may be required by Rules or Regulations in force in that country granting qualification, he need not undergo any practical training in India, as may be prescribed by Medical Council. But in case such practical training has not been gone into as may be prescribed by Rules and Regulations in force in the said country, in that case a candidate will have to undergo such practical training as may be prescribed by the appellant Council. In view of the decisions of appellant dated 17.10.1996 and 23.10.1996 requiring the respondents to undergo one year further internship/training in India after successful completion of degree course as a condition precedent for enrolment in the State Register and for the grant of permanent registration having been held to be vitiated. There is no illegality in the order passed by learned Single Judge in allowing writ petition No. 3599/97.

40. As regards duration of the course for the period prior to the memorandum of understanding with U.S.S.R., a Division Bench of Bombay High Court in Arun H. Bakle Vs. Union of India and Others, it was held that a person holding qualification from a foreign institution as laid down in Schedule 3 of Part II and who has undergone practical training there is entitled to be enrolled and Regulation requiring such person to undergo further training in India is invalid. The decision rendered by Division Bench of Bombay High Court would suggest that the Council was fully aware about the duration of medical course imparted by medical institutions in U.S.S.R. and for that reason alone 174 Indian students were sponsored by the Council for the said course. Dagestan State Medical Institute was recognised on 20.3.1990 and the prospectus of the said institute confirmed that the duration of medical course in U.S.S.R was for 7 years, namely, one year Orientation Course plus five years regular course and one year training. The appellant had accepted the recommendations of its Executive Committee dated 26.7.1994 and also decided to permit internship training in India, namely, 9 months of "Subordinator" in recognised hospitals in India in part

fulfillment of the requirement of Russian Medical Institutions awarding degree after provisional registration with the appellant for doing internship training. The decision of the appellant was rightly held to be arbitrary for insisting upon the respondents to undergo further period of one year training on having completed 1+6 years duration of medical course in U.S.S.R. There being nothing wrong in the decisions under challenge in the appeals filed by the appellant, no interference is called for by us and the appeals of the appellant are liable to be dismissed.

41. It may be noticed that admission to any Post Graduation Medical Course in India, is only through competitive entrance examination and a mere medical degree is not enough. Similarly any appointment in Government or other hospital at the junior most level is also on the basis of selection. Thus, even after a candidate possesses a medical degree still he has to undergo the process of merit evaluation at all levels for any progression in the profession. Even if he chooses to be in private practice then also he is bound to be under a constant discipline of the Medical Council of India. Under the circumstances, to deny registration to the persons who have obtained degrees and certificates from recognised medical institutions outside India and have spent requisite period in studying the medical course abroad, would be too harsh, particularly when almost three years have already elapsed.

42. Consequently, the appeals preferred by Medical Council of India are dismissed and the writ petitions filed by the respondents stand allowed in terms of the prayer clause, subject to the condition of production and thereafter verification of the original degrees/certificates of having successfully completed the degree course, which included internship and practical training in the 6th year. Follow up action, if any, to be taken by the Medical Council within a period of two weeks from today. Rule is made absolute.