
(2003) 07 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 2734 of 2002

Vitthal Chavan

APPELLANT

Vs

Medical Council of India and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A, 10B, 10C, 11(1), 11(2)

Citation : (2003) 4 ALLMR 198 : (2004) 2 BomCR 158 : (2003) 4 MhLj 974

Hon'ble Judges : D.D. Sinha, J;A.P. Deshpande, J

Bench : Division Bench

Advocate : S.P. Dharmadhikari, for the Appellant; M.G. Bhangde, for respondent No. 1, A.S. Kilor, Assistant Government Pleader for respondent No. 2, A.C. Dharmadhikari and B.G. Kulkarni, for the Respondent

Judgement

D. D. Sinha, J.—Heard Mr. S. P. Dharmadhikari, learned counsel for the petitioner, Mr. Bhangde, learned counsel for the respondent No. 1, Mr. Kilor, Asstt. Govt. Pleader for respondent No. 2, Mr. A. C. Dharamadhikari, learned counsel for respondent No. 3 and Mr. Kulkarni, learned counsel for respondent No. 4.

Rule, made returnable forthwith by consent of the parties and heard finally.

It will be appropriate to consider the facts and circumstances relevant for adjudication before we consider the legal issues involved in the present Writ Petition.

2. The petitioner has passed his M.B.B.S., examination from the Nagpur University in the year 1973 and has obtained Master's Degree (General Medicine) in the year 1979 from the Govt. Medical College and Hospital, Nagpur, under the Nagpur University. The petitioner was selected by the Divisional Board in October, 1977, and was appointed as a Lecturer in Medicine at Nagpur in the Govt. Medical College, as it then was. The said appointment of the petitioner was ratified by the Maharashtra Public Service Commission in March, 1978.

3. The petitioner was promoted as a Reader in Medicine and was posted at

Nagpur in the year 1981. The post of Reader came to be re-designated as Associate Professor in 1984. Therefore, the petitioner was re-designated as Associate Professor (Medicine). The petitioner, while discharging his duties as Associate Professor, appeared for Entrance Test in the year 1992 and was declared successful in the said test. Hence the petitioner was admitted to the course of Doctor of Medicine (Cardiology). The State Govt., permitted the petitioner to be on deputation to undertake the said course for two years. The said course was undertaken by the petitioner at Bombay Hospital, Institute of Medical Sciences at Mumbai, the petitioner was required to execute a bond of Rs. 5,00,000-00 and was required to undertake that he shall serve the State Govt., for a period of five years after acquiring the said qualification of Doctor of Medicine (Cardiology).

4. The petitioner was promoted and appointed as a Professor in Medicine in 1995. The State Govt., started Medical Post-graduate Institute at Nagpur and asked the petitioner his willingness to work as Associate Professor in the subject of Cardiology sometime in the month of August, 1995. The petitioner expressed his willingness. The State Govt., appointed the petitioner as a Senior Consultant (Cardiology) at the Govt. Medical Post-graduate Institute and Super Speciality Hospital at Nagpur in the month of December, 1995. The said post was re-designated as a Consultant Professor (Cardiology) on 4-3-1996.

5. On 4-9-1997, the respondent-State issued a resolution and thereby declared that the Post-graduate Institute is affiliated to the Govt. Medical College, Nagpur, and would be treated as a Teaching Institute. However, the petitioner was thereafter transferred to Mumbai on 29-5-1998 as a Professor in Cardiology, and was posted at Cardiology Department of Grant Medical College and Sir J. J. Group of Hospitals, Mumbai.

6. It is submitted by learned counsel for the petitioner that one Dr. N. O. Bansal challenged the appointment of the petitioner as Professor in Cardiology vide Original Application No. 137 of 2001 before the Maharashtra Administrative Tribunal. It is contended that the Original Application filed by Dr. Bansal was allowed. Being aggrieved by the same, the petitioner challenged the said decision before the Principal Seat of Bombay High Court at Mumbai and this Court, vide order, dated 25th February, 2002, disposed of the petition and directed the State Govt., to refer the case of the petitioner to the Medical Council of India for post facto relaxation of experience requirement as per proviso to Schedule-I, Para 6 and in case such reference is made, the Medical Council of India shall consider the same on its own merit without in any manner influenced by the observations made by the Tribunal and notwithstanding the fact that the petitioner has retained the lien over the post of Professor (Medicine). It is also observed in the said order that the State Govt., agrees to make a reference to the Medical Council of India and the Medical Council of India shall decide the said reference within a period of two months from the date of receipt thereof. It will be open for the petitioner to make a separate representation to the Medical Council of India.

7. It is submitted by learned counsel for the petitioner that in view of the liberty granted to the petitioner by this Court in the above referred order, the petitioner submitted a representation to the respondent No. 1, i.e., Medical Council of India on 6-3-2001. In the said representation, the petitioner has given all the details in respect of his professional qualifications, the post held by the petitioner, various Govt. Resolutions and also Schedule-I referred to in the Judgment of this Court, dated 25-2-2002.

8. The petitioner was transferred to Nagpur vide order, dated 23-3-2002, and posted as a Senior Consultant Professor (Cardiology). The State Govt., vide its forwarding letter, dated 21-3-2002, recommended the case of the petitioner for being designated as Professor in Cardiology to the Medical Council of India. It is submitted that the petitioner was surprised to receive a communication from respondent No. 1 on 9-4-2002, whereby the petitioner was informed that the representation/request of the petitioner forwarded through respondent No. 2 is rejected on the ground that the D. M. (Cardiology) qualification obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences under Bombay University is not recognised by the Council for the purpose of Indian Council Act, 1956 and also he does not possess the requisite teaching experience in the concerned speciality as prescribed by the Council in its Regulations. Hence the petitioner cannot be considered eligible for appointment as a Teacher in the Department of Cardiology in a Medical College/Institute in India. As per the Regulations, a Doctor must have a teaching experience as a Reader/Associate Professor in Cardiology for four years in a recognized Medical College/Teaching Institute.

9. In the present Writ Petition, the petitioner has challenged the above referred decision of the Medical Council of India whereby it is held that the Doctor of Medicine (Cardiology) qualification obtained by the petitioner from Bombay Hospital Institute of Medical Sciences and the degree conferred by the Bombay University in this regard, is not recognised by the Indian Medical Council for the purpose of Indian Medical Council Act, 1956.

10. It is not in dispute that the Bombay Hospital Institute of Medical Sciences, wherein the petitioner was admitted for Doctor of Medicine (Cardiology) course is affiliated to Bombay University. It is also not in dispute that the Bombay University is a University, which is recognized by the Medical Council of India under Sub-section (1) of Section 11 of the Indian Medical Council Act, 1956 and as such it is included in the First Schedule of the said Act. In the First Schedule of the Act, which is updated upto July, 1999, the name of the Bombay University finds place and against the said entry, various degrees and diplomas are enlisted which are recognized medical qualifications. In the said enlisted entries, the relevant entry, with which we are concerned, finds place and it reads thus :--

The counsel for the petitioner, therefore, contended that the degree awarded by the Bombay University in the subject of Doctor of Medicine (Cardiology) is a recognized medical qualification for the purpose of the Act. It is not in dispute

that the Bombay Hospital Institute of Medical Sciences was permitted to conduct various post-graduate medical courses at Bombay Hospital Institute of Medical Sciences by the Indian Medical Council. The communication, dated 5-7-1996, is placed on record which reveals that in pursuance of a decision reached by the Post-graduate Committee, Bombay Hospital Institute of Medical Sciences was permitted to conduct various postgraduate medical courses, and the Chairman had recommended annual admissions in the courses mentioned in the said communication. For Doctor of Medicine (Cardiology), one post is permitted. The same was the position from 1992 to 1994, when the petitioner was admitted in the Doctor of Medicine (Cardiology) at Bombay Hospital Institute of Medical Sciences, which is clearly reflected in the communication, dated 18-1-2000, addressed by the Medical Council to the Bombay Hospital. By the said communication, the Dean of the Bombay Hospital Institute of Medical Sciences, Mumbai, has been conveyed to continue the post-graduate medical courses and insofar as Doctor of Medicine (Cardiology) is concerned, the same is introduced in the year 1990.

11. The learned counsel for the petitioner, therefore, contended that the decision of the Medical Council of India holding that the Doctor of Medicine in Cardiology qualification obtained by the petitioner from Bombay Hospital Institute of Medical Sciences under Bombay University is not recognized by the Council for the purpose of Indian Medical Council Act, 1956 is palpably wrong and devoid of substance. It is further contended that there is no adjudication done by the Medical Council of India in view of power conferred on the Medical council of India regarding relaxation of experience as directed by this Court, in the above referred Judgment and, therefore, the finding recorded by the Medical (council of India is also bad in law on this count. It is contended that the very purpose of asking the State Govt., to refer the case of the petitioner to the Medical Council of India for post facto relaxation of experience as per proviso to Schedule-I, Para 6 by this Court vide Order, dated 25th February, 2002 passed in Writ Petition No. 2739 of 2001 is completely frustrated because there is no adjudication done by the Medical Council of India in respect of aspect of relaxation of experience required for being appointed to the post of Professor in Cardiology, and also came to the wholly incorrect decision that the Doctor of Medicine (Cardiology) qualification obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences under Bombay University is not recognized by the Medical Council of India for the purpose of Indian Medical Council Act, 1956. It is, therefore, contended that the decision taken and the finding recorded by the Medical Council of India is palpably wrong and devoid of substance. In order to substantiate the contention, the learned counsel for the petitioner placed reliance on the Judgment of the Apex Court in Dr. Arun Kumar Agrawal Vs. The State of Bihar and others, and the relevant observations of the Apex Court are in Para 9 which reads thus :--

"9. The controversy has been raised before us that the M.Ch. degree course in Neuro Surgery awarded by Rajendra Medical College, Ranchi University is not yet

recognised for the purposes of Indian Medical Council Act, 1956 and a letter of Medical Council of India dated 727-2-1991 has been placed on record in this regard. Learned counsel for the respondent No. 5 has tried to contend that M.Ch. degree obtained by the appellant was of no value as the same has not been recognised so far by the Medical Council of India. We find no force in this contention, as this course was started by the Ranchi University in 1980 with the consent of Medical Council of India and the State of Bihar has recognised such degree imparted by the Ranchi University and even before this Court [learned counsel appearing for the State of Bihar has admitted this position. We are not concerned in this case about the value of such degree for places outside State of Bihar, but so far as the present case is concerned which relates to the post of Assistant Professor in Patna Medical College and Hospital, Patna, which post is under the Bihar Government, no such objection can be maintained by the respondent No. 5."

12. Mr. Bhangde, learned counsel for the respondent No. 1 Council, supported the decision of the Medical Council of India, and contended that the qualification of D. M. (Cardiology) granted by the Bombay University in respect of the students trained/being trained at Bombay Hospital Institute of Medical Sciences cannot be considered as a recognised qualification, since as per the provisions of Section 11 of the Indian Medical Council Act, 1956, it is the duty of the Medical Institute or Medical college conducting a course in a particular subject to submit an application u/s 11 of the Indian Medical Council Act, 1956 through appropriate authorities (University concerned) for recognition of the said qualification granted by particular University. It is contended that in the instant case, Bombay Hospital Institute of Medical Sciences, Mumbai, never applied to the Central Govt., for getting D. M. (Cardiology) qualification recognised as a medical qualification for the purposes of Indian Medical Council Act, 1956 and, therefore, the said degree awarded by the Bombay University to the petitioner is not a recognised medical qualification for the purpose of this Act.

13. It is further contended by Mr. Bhangde that Sub-section (2) of Section 11 requires that the Central Govt., before recognizing the medical qualification for the purposes of this Act, is required to have a consultation with the Indian Medical Council and it is after such consultation and if the Central Govt., is satisfied, is required to issue a notification in the Official Gazette in order to amend the First Schedule so as to include such qualification therein. It is, therefore, contended that in the instant case the Bombay Hospital Medical Institute of Sciences never applied to the Central Govt., as per the provisions of Sub-section (2) of Section 11 of the Act and, therefore, the question of recognising the said qualification for the purposes of this Act does not arise. Mr. Bhangde further contended that though the Bombay University, D. M. in Cardiology is shown as a recognised medical qualification in Schedule-I of the Indian Medical Council Act, 1958, such qualification can be a recognised qualification for the purposes of the Act only in respect of four colleges affiliated to the Bombay University, which had moved the Bombay University for seeking

recognition from the Indian Medical Council to the subject of Doctor of Medicine (Cardiology) Course. Those colleges are (1) Grant Medical College, Mumbai, (2) Seth G. S. Medical College, Mumbai, (3) T. N. Medical College, Mumbai, and (4) L. T. M. Medical College, Sion, Mumbai, and the Bombay University thereafter had moved the Central Govt., for seeking recognition in favour of the said colleges, alone and as such though the Schedule-I includes Bombay University and the degree of Doctor of Medicine (Cardiology) as a recognised medical qualification, the same is valid and a recognised medical qualification for the purposes of this Act only in respect of the above referred four colleges and not in regard to any other college. Mr. Bhangde, learned counsel for the respondent No. 1, placed reliance on the Judgment of the Supreme Court in *Kaiser-I-Hind Pvt. Ltd., and Anr. v. National Textile Corporation (Maharashtra North) Ltd., and Ors.* JT 2002(7) 339. It is stated by Mr. Bhangde that the question, which was before the Apex Court, was whether the assent given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State legislation and the earlier law made by the Parliament or the existing law could only be qua the assent sought by the State with regard to the repugnancy of the laws mentioned in the submission made to the President for his consideration before grant of assent? Or would it prevail qua other laws for which no assent was sought? The issue was once the President grants, assent to the State legislation, the State law would prevail on the said subject and such assent would be deemed to be an assent qua all earlier enactments made by the Parliament on the subject. In Para 16, the Apex Court answered the question, which reads thus :--

"16. Applying the aforesaid meaning of the word "assent" and from the phraseology used in clause (2), the object of Article 254(2) appears that even though the law made by the Parliament would have supremacy after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and earlier law made by the Parliament, the President may give his assent to the law made by the State legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a law, which is repugnant to the law made by the Parliament. The word "assent" is used purposefully indicating affirmative action of the proposal made by the state for having law repugnant to the earlier law made by the Parliament, it would amount to accepting or conceding and concurring to the demand made by the State for such law. This cannot be done without consideration of the relevant material. Hence, the phrase used is "reserved for consideration", which under the Constitution cannot be an idle formality but would require serious consideration on the material placed before the President. The "consideration" could only be to the proposal made by the State."

Mr. Bhangde, learned counsel, on the basis of the ratio laid down by the Apex Court as referred to hereinabove, contended that a similar analogy will have to be applied in the present case. It is submitted that though the name of the

Bombay University and Doctor of Medicine (Cardiology) Course are shown and described in Schedule-I as a recognised medical qualification for the purposes of this Act, however, such recognised medical qualification in D. M. (Cardiology) will have to be restricted to the students of the four Medical Colleges referred to hereinabove imparting course in Doctor of Medicine (Cardiology), since these are the only ones which applied to the central Govt. for such recognition and is granted by the central Government u/s 11(2) of the Act.

14. Mr. Bhangde, learned counsel for respondent No. 1, further contended that the petitioner was appointed as a Lecturer in Medicine in October, 1977 at Nagpur with Govt. Medical College without having obtained a post-graduate degree which was obtained by the petitioner in M. D. (General Medicine) in the year 1979 from Nagpur University. It is further contended that according to the petitioner, he was appointed as a Professor in Medicine in 1995. It is contended that as per the Council Regulations on "Minimum Qualifications, for Teachers in Medical Institutions Regulations, 1998" and even before there was no provision for cross over from one Department to another at any level, meaning thereby that the petitioner could not have been appointed directly as an Associate Professor in the Department of Cardiology without having worked as a Lecturer in Cardiology. It is contended that even as per the averment in the petition, the petitioner had expressed his willingness to accept the post of Associate Professor in Cardiology in the month of August, 1995 and, therefore, the contention of the petitioner that he was granted designation of Professor in the year 1995 is inconsistent and difficult to accept. Mr. Bhangde, learned counsel, states that a person to be eligible to be appointed as a Professor in a particular subject is required to have a recognised qualification as mentioned in the Council Regulations on Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998. The petitioner does not have the recognised qualification in D. M. (Cardiology) in the first place, leave alone the experience required for the post of Professor in Cardiology. It is contended that the decision of the Medical Council of India in rejecting the case of the petitioner referred by the State Govt., is just and proper, firstly because as per the requirement of special academic qualification and teaching/research experience for Super Speciality Teachers, the person needs to be appointed as Asstt. Professor/Lecturer in the subject of Cardiology in the recognised Medical College. Such Asstt. Lecturer after obtaining experience of two years in the post of Asstt. Lecturer in a recognised Medical College/Teaching Institute would be eligible to be considered for the post of Reader/Associate Professor in Cardiology and such Reader or Associate Professor in Cardiology after gaining experience for a period of four years in the recognised medical college or teaching institute would be eligible to the post of Professor in Cardiology. It is contended that in the instant case, the petitioner was never appointed as Asstt. Lecturer in Cardiology and, therefore, he did not have two years" experience in this post and was not eligible to be considered as a Reader or Associate Professor and consequently cannot be considered for the post of Professor in cardiology. Secondly, the decision of the Medical Council is also

correct on the ground that Doctor of Medicine (Cardiology) qualification obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences under Bombay University is not recognised by the Medical Council of India under the Indian Medical Council Act, 1956. It is, therefore, contended that the contentions canvassed by the counsel for the petitioner are misconceived and the decision of the Medical Council is just and proper.

15. Mr. Bhangde, learned counsel for respondent No. 1, does not dispute the fact that the Bombay Hospital Institute of Medical Sciences was authorised and permitted by the Medical Council of India to conduct the course in Doctor of Medicine (Cardiology). The Hospital is conducting the said course from the year 1990 onwards and the medical qualification, i.e., degree of Doctor of Medicine in Cardiology awarded by Bombay University was the qualification included in the First Schedule of the Act of 1956.

16. We have considered the contentions canvassed by the respective counsel and perused the relevant provisions of the Indian Medical Council Act, 1956 as well as the earlier Judgment of this Court, dated 25th February, 2002, passed in Writ Petition No. 2739 of 2001 as well as the Judgments of the Apex Court referred to hereinabove by the respective counsel. On the backdrop of the above referred facts, there are two main questions which fall for our consideration in the present Writ Petition, and they are :--

(a) Whether the Doctor of Medicine (Cardiology) qualification obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences under Bombay University is a recognised medical qualification for the purposes of this Act?

(b) And, whether the petitioner could be appointed as Professor in cardiology in view of the requirement of special academic qualifications and teaching/research experience for Super Speciality teachers?

Before we adjudicate upon the points in issue, it will be proper to consider the relevant provisions of the Indian Medical Council Act, 1956 and its applicability in respect of the issues in question.

17. Section 10A of the Act deals with the permission for establishment of new Medical Colleges, new course of study etc.. Sub-section (1) of Section 10A contemplates that no person, (for the purpose of this section a person includes any University or a trust, but does not include the Central Government), shall open a new or higher course of study or a training except with the prior permission of the Central Government, that too obtained in accordance with the provisions of Section 10A. It is, therefore, apparent that neither a Medical College individually, nor a University can open/start a new or a higher course of study or training without previous permission of the Central Government obtained in accordance with Section 10A of the Act.

18. Section 10A is inserted by the Indian Medical Council (Amendment) Act, 1993 and came into force with effect from 27th August, 1992. Section 10A is a

complete code in respect of procedure to be adopted by the person (University) or medical college seeking permission from the Central Government to establish a new medical college or for opening a new or higher course of study or training. The provisions are exhaustive in nature and have overriding effect in respect of other provisions, contained in the Indian Medical Council Act, 1956. Under the scheme of Section 10A, there is a complete and absolute prohibition for establishing a new medical college or opening a new or higher course of study or training without permission of the Central Government contemplated u/s 10A of the Act. It is, therefore, amply clear that if any person (University) wants to establish a new medical college or a course and fails to seek permission u/s 10A, no medical qualification granted to any student of such medical college or University shall be a recognised medical qualification for the purpose of this Act. Sub-Sections (2) to (8) of Section 10A of the Act deal with the procedure which needs to be adopted by the University or College seeking permission under Sub-section (1) of Section 10A and the obligations to be discharged by the Central Government as well as Indian Medical Council, before decision is taken by the Central Government in respect of grant or refusal of permission under Sub-section (1) of Section 10A and similarly the period within which the permission needs to be sought from the Central Government.

19. We must express that Medical Council of India is an Apex body to consider and provide for the recognition of the medical qualifications, granted by the Medical Institutes, Colleges, Universities. Similarly it is the parent body and the only competent body for the purpose of assessing the prescribed standards of medical education at all levels. Medical education is a serious business and needs to be viewed in its proper perspective. There is hardly any room for compromise or deviation from the standards set by the Indian Medical Council in respect of the medical education, as well as procedure for recognition of the college or the course. So far as sub-clause (b) of Sub-section (3) of Section 10A is concerned, the Medical Council of India is required to consider various factors provided in sub-clauses (a) to (g) of Sub-section (7) of Section 10A before sending its recommendations to the Central Government in respect of the scheme submitted to it by the Central Government. Similarly, another relevant provision, which has a positive bearing in this regard, is Section 10B of the Act which deals with non-recognition of medical qualification in certain cases. Sub-section (1) of Section 10B clearly conveys that where any Medical college is established, except with the previous permission of the Central Govt., in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purpose of this Act. Similar is the case in respect of opening of new or higher course of study or training without permission contemplated u/s 10A by the medical college. So far as Sub-section (3) of Section 10B is concerned, the same is not relevant for the controversy in issue.

20. Section 10C of the Act is very relevant in respect of the controversy in issue which specifically deals with time for seeking permission for certain existing

medical colleges and prescribes a procedure in this regard. Sub-section (1) of Section 10C contemplates that if after 1st day of June, 1992 and on and before the commencement of the Indian Medical Council (Amendment) Act, 1993 any person (University) has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity, such person (University) or medical college, as the case may be shall seek within a period of one year from the commencement of Indian Medical Council (Amendment) Act, 1993, the permission of the Central Govt., in accordance with the provisions of Section 10A.

21. It is important, to note that Sub-section (2) of Section 10C deals with the consequences of failure to obtain permission by the person (University) or medical college within a stipulated period contemplated under Sub-section (1) of Section 10C and such University or medical college would come within the ambit of the provisions of Section 10B of the Act and it will be held that so far as such University or medical college is concerned, permission of the Central Govt. u/s 10A has been refused, with the result no medical qualification granted to any student of such medical college or University shall be a recognized medical qualification for the purpose of this Act. The scheme of Section 10C of the Act takes care of the Universities or medical colleges established after 1st June, 1992 and on and before commencement of Medial Council (Amendment) Act, 1993. Plain reading of Section 10C clearly shows that it is attracted only in case of establishment of medical college-University or any medical college which has opened a new or a higher course of study or training after 1st June, 1992 and on or before the commencement of Indian Medical Council (Amendment) Act, 1993. Only such Universities/such colleges, are required to seek permission of the Central Government in accordance with the provisions of Section 10A within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1993. Similarly, Sub-section (2) of Section 10C also by necessary implication would apply only in respect of such medical colleges which have been established within the periods specified in subsection (1) of Section 10C and failure of these colleges to seek necessary permission within the stipulated period shall attract provisions of Sub-section (1) of Section 10B and it will be construed that permission of Central Govt., u/s 10A to such University/ Medical College has been refused. Medical Colleges and Medical Institutes affiliated to such University imparting higher courses of study and training already in existence much prior to the commencement of the Indian Medical Council (Amendment) Act, 1993 and such higher course or study or training including a post-graduate course of study or training is recognised and included in the First Schedule of recognition contemplated u/s 11(1) of the Medical Council of India Act does not fall within the ambit of either Sections 10A and 10B or Section 10C of the Act.

22. The scheme of this Section 10A of the Act will have to be read with the scheme of Section 10C of the Act and by necessary implication, it will have to be construed that the provisions of Section 10A of the Act shall be applicable only in

respect of person (University) which has established a medical college or any medical college which has opened a new course of study or training after 1st day of June, 1992 and on or before the commencement of Indian Medical Council (Amendment) Act, 1993. If the Legislature really intended to bring all the existing medical colleges/medical institutions providing higher course of study within the ambit of Sections 10A, 10B and 10C, in that event the Legislature would not have restricted the application of provisions of Section 10A only in respect of medical colleges established by University or a Medical College which has opened new or higher course of study or training only after 1st day of June, 1992 and on or before the commencement of the Medical Council (Amendment) Act, 1993 as provided u/s 10C of the Act.

23. It is, no doubt, true that Section 10A starts with a non-obstante clause and, therefore, has a overriding effect on all the other provisions of the Act. However, it will have to be read in such a manner which shall not render provisions of Section 10C of the Act nugatory. Similarly, intention of the Legislature in this regard will have to be inferred and needs to be construed logically and harmoniously to provide a proper meaning and interpretation to the scheme of these provisions of the Act. The analogy, which emerges, as far as Sections 10A and 10C are concerned, is that permission for establishment of new college/new course of study is required to be obtained from the Central Govt., as per the procedure provided u/s 10A of the Act if such colleges are established after 1st June, 1992 and on or before the date of commencement of Indian Medical Council (Amendment) Act, 1993. The time for seeking permission for existing medical colleges is restricted only to such medical colleges which are established after 1st day of June, 1992 and on or before the commencement of the Indian Medical Council (Amendment) Act, 1993. On the backdrop of the above referred provisions, it is undoubtedly clear that the provisions of Section 10A are applicable only to the medical colleges established and medical colleges which have opened new or higher course after 1st June, 1992 and, therefore, other medical colleges/institutions which are in existence prior to 1st June, 1992 and affiliated to Universities and the higher study or training, including post-graduate study or training imparted by such medical colleges or medical institutions already recognized by the Medical Council of India and are already included in the First Schedule are not covered under the scheme of the provisions of Section 10A as well as Section 10C and, therefore, the medical qualification granted to any student of such medical colleges/medical institutes by such Universities shall be a recognised medical qualification for the purpose of this Act,

24. The provision of Section 11 deal with Medical Institutes in India and Sub-section (1) of Section 11, in no uncertain terms, contemplates that the medical qualification granted by the Universities or the Medical Institutes in India, which are included in the First Schedule shall be a recognized medical qualification for the purpose of this Act, So far as the requirement for recognised medical qualification for the purpose of this Act is concerned, it will be judged solely on the ground as to whether such University or Medical Institute granting such

medical qualification is included in the First Schedule and if it is included in the First Schedule, then medical qualification granted to any student of such medical college shall be a recognized medical qualification for the purpose of this Act.

25. Sub-section (2) of Section 11 is applicable only in respect of such University or Medical Institute in India which grants a medical qualification not included in the First Schedule. Such Universities or Medical Institutes are only required, under Sub-section (2) of Section 11, to apply to the Central Govt. to have such qualification recognised and after consulting, the Council may by notification in the Official Gazette amend the First Schedule so as to include such qualification therein. Even as per Sub-section (2) of Section 11, it is amply clear that the recognized qualification would be one which is included in the First Schedule and, therefore, if medical qualification, which is already included in the First Schedule, can always be a recognised medical qualification for the purpose of this Act.

26. It is, therefore, evident that a post-graduate medical degree granted by an University duly established by the statute in this country and which has also been recognised by the Indian Medical Council by its inclusion in the First Schedule in the Indian Medical Council Act, 1956 must ipso facto to be regarded, accepted and treated as valid throughout the country. Such degree awarded by such University will have to be construed as a degree or a recognised medical qualification for the purpose of this Act.

27. The Medical Council of India being an apex body to grant recognition to the medical qualification granted by the Universities or the Medical Institutes is the final authority in this regard and if the recognition is granted by the Medical Council of India to such qualification granted by the University by including it in the First Schedule, the same is a valid recognition of such medical qualification for the purpose of this Act.

28. The Indian Medical Council was the sole Competent Authority/Body to grant recognition to the medical qualification granted by the Medical Institute/College or University before coming into force the Indian Medical Council (Amendment) Act, 1993 and such medical qualification was a recognised medical qualification for the purposes of this Act. The only requirement was that such qualification must find place in Schedule-I of the Indian Medical Council Act, However, after 1st June, 1992, any University or Medical Institute in India established after obtaining permission u/s 10A of the Act of 1956 and grants medical qualification not included in the First Schedule is required to apply to the Central Govt., for such qualification to be recognized in view of Sub-section (2) of Section 11 of the Act. Even as per the scheme of Sub-section (2) of Section 11 of the Act, the recognised medical qualification would be one which finds place in the First Schedule and, therefore, the only requirement in all eventualities to treat a medical qualification recognized for the purposes of this Act is that it must find place in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification.

29. On the backdrop of the above referred legal position, we propose to examine the case of the petitioner firstly in respect of the question as to whether Doctor of Medicine (Cardiology) qualification obtained by the petitioner from Bombay Hospital Institute of Medical Sciences under the Bombay University Act is a recognised qualification for the purpose of the Indian Medical Council Act, 1956. In order to appreciate this aspect of the matter, there are certain undisputed facts, which are very relevant in this regard. Those are as follows :--

The petitioner in 1992 was admitted to the course of D. M. (Cardiology) of two years" duration at Bombay Hospital Institute of Medical Sciences, Mumbai, and was also required to execute a bond of Rs. 5 lakhs and was required to undertake that he shall serve the Government for a period of five years after acquiring the said qualification. The Bombay Hospital Institute of Medical Sciences was affiliated to Bombay University which is recognised by the Indian Medical Council and, therefore, under Sub-section (1) of Section 11 of the Indian Medical Council Act, was included in the First Schedule of the Act. The First Schedule of the Act is updated upto July, 1999, the name of Bombay University is included. Against the said entry, various degrees and diplomas are enlisted which are recognised medical qualifications. The relevant entry is already referred to hereinabove. The communication, dated 5-7-1996, issued by the Medical Council to the Dean, Bombay Hospital Institute of Medical Sciences annexed to the petition as Annexure-XII reveals that the hospital was permitted to conduct courses mentioned in the said communication, one of which is D. M. (Cardiology). For Doctor of Medicine (Cardiology), one seat was permitted. Similar was the position during the period 1992 to 1994 when the petitioner was admitted in Doctor of Medicine (Cardiology) at Bombay Hospital Institute of Medical Sciences. This is also evident from another communication, dated 18-1-2000, of the Medical Council of India to Bombay Hospital, whereby the Dean of Bombay Hospital Institute of Medical Sciences was communicated to continue to conduct the post-graduate medical courses and so far as Doctor of Medicine (Cardiology) is concerned, the permission was from the inception of the introduction of this course by Bombay Hospital, i.e., from 1990. The petitioner obtained the degree of Doctor of Medicine (Cardiology) -- the qualification is obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences and is conferred by the Bombay University. On the backdrop of these undisputed facts, and in view of Sub-section (1) of Section 11 of the Act the medical qualifications granted by the Universities or Medical Institutes in India, which are included in the First Schedule, shall be the recognised qualifications for the purposes of this Act. As we have already observed hereinabove, so far as the requirement for recognised medical qualification for the purposes of this Act is concerned, it will be judged solely on the ground as to whether such University or Medical Institute granting such medical qualification is included in the First Schedule and if it is included in the First Schedule, then medical qualification granted to such student of such medical college shall be a recognised medical qualification for the purposes of this Act. When the petitioner was admitted to the course of D. M.

(Cardiology) in Bombay Hospital Institute of Medical Sciences, this medical qualification granted by the Bombay Hospital Institute of Medical Sciences and conferred by the Bombay University was included in Schedule-I and, therefore, as per the requirement of Sub-section (1) of Section 11, this undoubtedly shall be a recognised medical qualification for the purposes of this Act.

30. The contention advanced by Mr. Bhangde, learned counsel for respondent No. 1, that such recognition is only restricted to four college referred to hereinabove, which have specifically sought such recognition from Central Government is not only reading something more which is not provided in subsection (1) of Section 11 of the Act, but would be completely derogatory to the principles of interpretation of the statute. While interpreting a statute, where the language of the statute is capable of conveying intention of the Legislature in regard to such statute, in that case it needs to be interpreted as it is without adding and subtracting anything to such statute. Any addition or subtraction to the statute by the Court shall destroy the intention of the Legislature and frustrate the purpose of such statute. The plain reading of Sub-section (1) of Section 11 does not require anything more than the inclusion in Schedule-I such medical qualification granted by the University or a medical Institute in India and if it is included in Schedule-I, such medical qualification shall be a recognised medical qualification for the purposes of this Act. The ratio laid down by the Apex Court *Kaiser-I-Hind Pvt. Ltd. and Others Vs. National Textile Corporation (Maharashtra North) Ltd. and Others*, operates in an altogether different situation where the assent given by the President under Article 254(2) of the Constitution of India undoubtedly would apply to the proposals made by the State. However, in view of the provisions of Sub-section (1) of Section 11 of the Act, once the medical qualification granted by the University or a Medical Institute is included in the First Schedule and so long as it remains there, such qualification shall be a recognised medical qualification for the purposes of the Medical Council of India Act, 1956 and there is no requirement in such situation in respect of such Universities or medical institutions to again apply to the Central Govt., for grant of recognition. So far as Sub-section (2) of Section 11 of the Act is concerned, the Universities or Medical Institutions in India, which grant medical qualifications not included in the First Schedule, are the only Universities and Medical Institutions required to apply to the Central Government to have such qualifications recognised, Sub-section (2) of Section 11 also mandates that if the medical qualification granted by the University or a Medical Institute is included in the First Schedule, there is no question of applying again to the Central Government to have such qualification recognised. To ask such University and Medical Institution to again apply to the Central Govt., to have such qualification recognised which is already included in the First Schedule would be not only doing violence with the mandate of subsection (2) of Section 11 of the Act, but is also not the requirement of the said provision and, therefore, the ratio laid down by the Apex Court is not applicable in the case of the petitioner.

31. The argument of Mr. Bhangde that the above referred four medical colleges

have undertaken the exercise in view of Sub-section (2) of Section 11, though the medical qualification granted by those medical institutions was included in the First Schedule and, therefore, other medical colleges or institutes, which are similarly situated, are also required to follow the procedure under subsection (2) of Section 11 of the Act, in our considered view, is misconceived and devoid of substance, since it is not the requirement of either Sub-section (1) or Sub-section (2) of Section 11 of the Act and it would be an unwarranted exercise which is not contemplated under provisions of Section 11 of the Act.

32. On the other hand, the ratio laid down by the Apex Court in *Dr. Arun Kumar Agrawal Vs. The State of Bihar and others*, cited by the counsel for the petitioner squarely applies to the case in hand. The relevant observations in Paragraph 9 are already referred to hereinabove. The ratio laid down by the Apex Court contemplates two things that (1) the course started by the University must be with the consent of the Medical Council of India and (2) the concerned State must recognise such degree conferred by such University. In the instant case, undoubtedly, the Doctor of Medicine (Cardiology) is the qualification obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences and conferred by the Bombay University and by its inclusion in Schedule-I, it shall be not only a recognised qualification for the purposes of the Medical Council of India Act, 1956 but it is evident that the course is conducted by the Institution with the consent of the Medical council of India and the State of Maharashtra has recognised such a degree awarded by the Bombay University. On the backdrop of the above legal provisions, we are of the considered view that the decision of the Indian Medical Council so far as it relates to the aspect that the Doctor of Medicine (Cardiology) qualification obtained by the petitioner from Bombay Hospital Institute of Medical Sciences is not a recognised qualification for the purposes of Indian Medical Council Act is misconceived and devoid of substance and is hereby set aside. Consequently, it is held that the said qualification shall be a recognised medical qualification for the purposes of this Act and we answer the first question accordingly.

33. So far as another question about eligibility of the petitioner to be appointed as a Professor in Cardiology is concerned, it is relevant to refer to the earlier decision of this Court and the direction given therein. This Court, vide Order, dated 25th February, 2002 passed in Writ Petition No. 2739 of 2001, directed the Medical Council of India for post facto relaxation of experience requirement as per proviso to Schedule-I, Para 6. However, the decision/communication, dated 9-4-2002, whereby the petitioner was informed that he is not eligible for appointment as a Teacher in the Department of Cardiology in a Medical College or Institute in India, does not provide any reasons for arriving at such a conclusion by the Council, except a general observation that the petitioner does not possess the requisite teaching experience in the concerned speciality as prescribed by the Council in its Regulations. It appears that the Council has not adjudicated upon this aspect of the matter and also has not considered whether in case of the petitioner, is there any possibility of relaxation of requisite teaching

experience. The Council appears to have given more weightage to the fact of non-recognition of the medical qualification of the petitioner while rejecting the representation of the petitioner/recommendations of the State Govt. in this regard. Similarly, the promotional ladder and the requisite experience for being appointed to the post of Professor in Cardiology as canvassed by Mr. Bhangde, learned counsel for respondent No. 1, before us do not appear to have been considered by the Medical Council of India and, therefore, in our view, so far as all these factors are concerned, the matter requires re-consideration in this regard by the Medical Council of India keeping in view the proviso to Schedule-I, Para 6. The decision of the Medical Council of India, so far as it relates to petitioner not being eligible for appointment as a Teacher in the Department of Cardiology, since he does not possess the requisite teaching experience in the concerned speciality as prescribed by the Regulations is also hereby set aside. Hence we keep open the second question referred to hereinabove and leave it to the Indian Medical Council to re-consider the same.

34. The matter is remitted to the Indian Medical Council and we direct the Medical Council to treat the medical qualification, i.e., Doctor of Medicine (Cardiology) obtained by the petitioner from the Bombay Hospital Institute of Medical Sciences and the degree conferred by the Bombay University as a recognised medical qualification for the purposes of Indian Medical Council Act, 1956 and re-consider the eligibility of the petitioner keeping in view the powers of relaxation vested in the Council in respect of requirement of experience of the petitioner for the purpose of appointment of the petitioner in the Department of Cardiology and take a fresh decision in this regard within a reasonable time.

Petition is partly allowed in above terms. No order as to costs.