

CASE NO.:
Writ Petition (civil) 604 of 2002

PETITIONER:
Sanjeev Gupta & Ors.

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 16/11/2004

BENCH:
CJI., ASHOK BHAN & G.P. MATHUR

JUDGMENT:
J U D G M E N T

WITH

W. P. (C) No. 616/ 2002,
Akannsha Singh & Ors.
Vs.
Union of India & Anr.

W. P. (C) No. 634/2002,
Anoop Nambiar & Ors.
Vs.
Union of India & Ors.

W. P. (C) No. 22/2003
Sudharsan Sornam & Ors.
Vs.
Union of India & Ors.

W. P. (C) No. 11/2003
Azaj Ahmed Malik
Vs.
Medical Council of India

W. P. (C) No. 14/2003
Sushim Mathur & Ors.
Vs.
Union of India & Anr.

W. P. (C) No. 16/2003
Arun Sreedhar & Ors.
Vs.
Union of India & Ors.

W. P. (C) No. 26/2003
Sonia Chadha & Ors.
Vs.
Union of India & Ors.

W. P. (C) No.25/2003
Raja Shekhar & Ors.
Vs.
Union of India & Anr.

W. P. (C) No.27/2003
Aman Pal Singh & Ors.
Vs.

Union of India & Anr.

W. P. (C) No.33/2003

Sachin Grover & Ors.

Vs.

Union of India & Anr.

W. P. (C) No.34/2003

Ashik Keereerakath & Anr.

Vs.

Union of India & Ors.

W. P. (C) No.391/2003

J. Muthuvel

Vs.

Union of India & Ors.

W. P. (C) No.404/2003,

Nimai Chandra Jena

Vs.

Union of India & Anr.

W. P. (C) No.488/2003,

Anup Ranjan Dey Sarkar & Anr.

Vs.

Union of India & Anr.

W. P. (C) No.185/2004,

Varun Mittal

Vs.

Union of India & Anr.

W. P. (C) No.184/2004

Vipul Mittal

Vs.

Union of India & Anr.

W. P. (C) No.166/2004

Gagan Sethi

Vs.

Union of India & Anr.

W. P. (C) No.190/2004

Manjusha Varghese

Vs.

Union of India & Ors.

W. P. (C) No.172/2004

Gaurav Sagar

Vs.

Union of India & Anr.

SLP [C]/2004 CC. No.2256-2258

Anand Kumar Singh & Ors.

Vs.

Union of India & Ors.

I.A. No. of 2004

In W.P.) No. 604 of 2002

BHAN, J.

Delay condoned. Leave granted in SLP(C).....of 2004 CC No. 2256-2258.

Interlocutory application in WP (C) No. 604 of 2002 is allowed.

As the points of law involved in all these cases are the same or similar with little variations which would be indicated in the later part of the judgment, this judgment shall dispose of all the above-mentioned cases by a common judgment.

Writ Petition (C) No. 604 of 2002, WP(C) No. 25 of 2003 and WP(C) No. 33 of 2003 pertain to the batch of students who joined the course in 1994 whereas the WP(C) No. 616 of 2002, WP(C) No. 634 of 2002, WP(C) No. 11 of 2003, WP(C) No. 14 of 2003, WP(C) No. 16 of 2003, WP(C) No. 26 of 2003, WP(C) No. 25 of 2003, WP(C) No. 27 of 2003, WP(C) No. 34 of 2003, WP(C) No. 404 of 2003, C.A. No. of 2004 (arising out of SLP (C) No. of 2004/CC No. 2256-2258) and IA of 2004 pertain to the students who joined the course in the year 1995; WP(C) No. 391 of 2003, WP(C) No. 488 of 2003 and WP(C) No. 190 of 2004 pertain to the students who joined the course in 1996; WP(C) No. 185 of 2004 and WP(C) No. 172 of 2004 pertain to the students who joined the course in 1999, WP(C) No. 166 of 2004 pertains to the students who joined the course in 2000 and WP(C) No. 22 of 2003, year of joining the course was not mentioned.

Before advertng to the facts of the present cases and the points involved, it would be necessary to state the background facts leading to filing of the present petitions.

BACKGROUND FACTS:

In the year 1981 Government of India requested the Medical Council of India (for short "MCI") for consideration of grant of recognition for medical courses in medical institutions in the erstwhile States of USSR. MCI gathered the information that the graduate medicine courses in these institutions is of six years after one year of the language training. Thereafter, the candidates are required to undertake mandatory internship of 12 months. Section 13 (3) of the Indian Medical Council Act, 1956 (hereinafter, 'the Act' for short) also stipulates undergoing one-year internship after obtaining the medical qualifications. Section 12 of the Act provides that the MCI can grant recognition of medical qualifications to the medical institutions in various countries with which there is a scheme of reciprocity. After considering the report received from the MCI Government of India in 1986 recognised certain institutions in the erstwhile States of USSR. Such institutions were put in the Second Schedule of the Act.

After the disintegration of USSR, serious aberrations in the system of recruitment and admission of students in institutions located in Russia and CIS countries were reported by the Indian Embassies at Moscow & Almaty in the early part of the year 1994. Various private agencies with dubious antecedents mushroomed and sponsored medical candidates for commercial gains. A perceptible decline in the standards of medical education in these countries was also noticed. In the backdrop of communications received from the Indian Embassies, the Government of India was concerned that if the situation is allowed to continue, a large number of Indian students would end up in medical institutions with doubtful standards. Government of India sought the comments of MCI as to whether the recognition of these institutions could be continued in view of the communications received from the Indian Embassies at Moscow & Almaty. MCI sent its comments to the Central Government on 1.11.1994 recommending de-recognition of all medical degrees of the erstwhile USSR included in the Second Schedule of the Act.

In these circumstances, Government of India in March 1995

issued an advertisement in the newspapers informing the general public that no private agency had been authorised by the Government of India to select students for admission in under graduate and post graduate medical courses in Russia and other CIS countries and informing the students taking admission in medical courses through such private agencies that they would be doing so at their own risk and Government of India would not be responsible for any consequences in respect of the students joining such medical courses in those countries.

In the year 1996, the Counsellor (Education) in the Embassy of India at Moscow brought to the notice of MCI and the Ministry of Human Resource Development that the Russian Ministry of Health had continued to give admission to students sponsored through private agencies in India. He also reported that there was a decline in the academic standards of Russian educational institutions and manifest erosion of ethics which made it impossible to be sure that undeserving students would not complete their medical education from these institutions. The calibre of the Indian students studying there had also sharply deteriorated. The Counsellor further informed that though earlier, Indian students were known for their high academic performance, unfortunately that was not the case any more.

MCI also gathered information that many Indian students who were not eligible for admission to medical degree courses had secured admission in Russian medical institutes. Some of these students had secured less than 50% marks in the 10+2 examination and many had not studied Biology as a subject in school. Besides, there were number of students who initially took admission in institutes not recognised by the MCI and after doing part of their studies in such institutes, subsequently migrated to recognised institutes. There was another category of students who came back to India with medical degrees after undergoing the course with less than the prescribed six years of studies in medicine.

In August 1997 the MCI issued an advertisement in the newspapers warning the students against taking admission in medical courses in the countries of former USSR through private agencies and informing them that they shall be doing so entirely on their own risk. It was further informed that the matter of recognition of degrees granted by the 29 medical institutions in the countries of the former USSR was currently under review and that the MCI would not be granting recognition to students who obtained admission in these institutes on their own without awaiting the decision with regard to the recognition status of these institutes. It was also informed that such students would not be eligible to practice medicine in India. The Executive Committee of MCI in discharge of its statutory duty on 17.9.1997 took the decisions mentioned in the following paragraph in respect of the students coming back from various medical institutions from the erstwhile States of USSR and seeking registration under the provisions of the Act, when such students either did not have 50% marks in 10+2 or did not have biology as one of the subjects or got admitted in unrecognised medical institutions or were getting the degrees in medicine without undergoing the complete duration of the medicine course and had got admission through private agencies:-

"a) The students who complete their medical degree course of less than 6 years duration from institutions in erstwhile USSR shall not be eligible for registration because of the fact that the duration of M.D. (Physician) course is 6 years, after one year preparatory/language course.

(b) The students completing successfully total six years clinical M.D. (Physician) course in an MCI

recognised institute i.e., obtaining recognised M.D. (Physician) degree on or after 1/7/97 shall have to undergo one year internship after obtaining the qualification. Such candidates only shall be eligible for permanent registration u/s 13(3) of the M.C.I. Act, 1956 provided they meet the other criteria of the Council laid down with regard to admission for undergraduate medical course.

(c) The students who were initially admitted in an institution not recognised by the MCI and later on migrated and obtained the degree from recognised medical institutions in erstwhile USSR will not be eligible for any kind of registration in India."

The decision of the Executive Committee of the MCI was approved by the General Body of the MCI.

After carefully considering all the relevant factors, in a meeting held on 6.11.1998 presided over by the Principal Secretary to the Prime Minister of India and attended by the Foreign Secretary, Health secretary, Secretary, MCI and other senior officers of Ministry of external Affairs and the Prime Minister's Office, the following decisions were arrived at:

"1. There will be no change in the status of the two institutions namely Daghestan State Medical Institute, Russia and Azerbaijan Medical Institute in Azerbaijan which were already de-recognised in March, 1998.

2. Instead of going in for de-recognition of the other medical institutions in the erstwhile USSR, a system of post-screening of the students who are coming back to India after obtaining the degree from these institutions can be introduced straightway. This can be made applicable to all the students who return to India after obtaining medical degrees from any foreign medical institution.

3. A system of pre-screening of the students desirous of taking admission in the medical institutions in these countries shall also be worked out by MCI. This can be introduced from the forthcoming academic year.

4. The MCI and the Department of Health will work out technical details for introducing the pre-screening and post-screening processes suggested above."

As pointed out earlier, after disintegration of USSR admissions of students ran into difficulties for either not having studied in recognised colleges or partly in recognised and partly in non-recognised colleges or they had not completed their courses in full. MCI entertained serious doubts as to the genuineness of some of the courses undergone by various students, thus leading to difficulties on the question of recognising their degrees and their registration as medical practitioners. Writ petitions were filed in different High Courts by persons [mostly by 1997-98 batch pass-outs] who had undergone courses in medicine in medical colleges in the erstwhile USSR. MCI took the stand that when initial admission of the students in the

non-recognised institution could not be accepted, their transfer to recognised colleges subsequently could not be of any benefit to them. MCI also passed various types of orders either during the pendency of the proceedings before the courts or otherwise in relation to recognition of the degrees or registration of such persons as practitioners. Delhi High Court allowed the writ petitions and granted relief to the doctors concerned. Allahabad High Court also granted interim order. Aggrieved against the orders passed by the High Courts, MCI filed appeals in this Court. During the course of hearing of the appeals certain suggestions were made and the Solicitor General of India who was appearing for the MCI was requested to seek instructions from MCI with a view to mitigate the hardship being faced by the graduates of medical schools/colleges, Russia. In response to the aforesaid the General Body of the MCI met on 31.3.2000 and resolved as follows:

"The Executive Committee in order to remedy the various problems which have arisen on account of the break-up of Soviet Union, as a one time measure decided to place the following possible solutions for consideration by the Hon'ble Supreme Court :-

- i) In the view of the Medical Council any student who has obtained less than 50% marks in Physics, Chemistry & Biology in the 10+2 examination would not at all be eligible for registration. This in the considered view of the Council is an absolute imperative in the larger interest of public health.
- ii) MCI recognised institutions which impart 6 years of medical education with one year's of internship. Therefore, degrees issued by such recognised institutions to students who have put in 6 years of medical education and have successfully completed the course and obtained the degree and thereafter have completed one year of internship (both in recognised institutions) would be recognised by MCI and will be considered eligible for provisional/permanent registration as the case may be.
- iii) In relation to students who have completed 6 years of medical education, out of which initial period of not more than 4 months was in an unrecognised institution, and the rest in a recognised institution the MCI will accept their request for registration upon their completing 16 months of internship.
- iv) The students who have completed 6 years of medical education but have studied more than 4 months but not more than 6 months in an unrecognised institution (and the rest in a recognised institution) should be required to undergo an additional internship of 12 months over and above the usual internship of 12 months i.e. total internship of 24 months.
- v) In case of the students who have studied 5 = years of medical education (although in a recognised institution) would appear in an examination and upon being successful (in not

more than 3 attempts) will be required to undergo regular 12 months of internship after which they would be considered for registration.

vi) In all other cases, where the candidate is otherwise qualified (i.e.) he has obtained more than 50% marks in Physics, Chemistry and Biology in the 10+2 examination but has put in less than 5 = years in a recognised institution (whether on account of a compressed course or on account of putting in more than 6 months in an unrecognised institution), the candidate may be required to surrender his degree to his recognised institution, complete the deficient period so as to have completed 6 years of medical education in the same recognised institution and thereafter obtain a fresh degree from the said recognised institution. It may be clarified that this deficient period can be covered only by going back to the same institution from where he has earlier obtained the degree which has now been surrendered.

vii) The screening test required to be undergone by the candidates will be the same as conducted by the All India Institute of Medical Sciences, New Delhi for the candidates desirous of admission in the post-graduate courses in the institute. The

Council was of the view that this test would be most appropriate to test the provisional knowledge of medical graduates of institution in Russian Federation & other CIS countries."

This Court passed an interim order dated 17.4.2000 in the pending appeals accepting the resolution, reproduced above, passed by the General Body of the MCI with the modification that screening test required to be undergone by the candidates covered by the clause (vii) should be of the standard of MBBS and not of post-graduate course of All India Institute of Medical Sciences as suggested in the resolution. Resolution of the MCI was accepted as an interim arrangement. It was directed that those of the students who are covered by any of the categories mentioned in clauses (i) to (vii) of the resolution (supra) and are agreeable to the suggestions contained therein shall get the benefit of the resolution to the extent applicable to each one of them. The candidates who get benefit under the aforesaid resolution of the MCI and are entitled to registration shall be registered provisionally within four weeks from the date they applied for such registration. It was clarified that the benefit being taken by any of the candidates is without prejudice to any submissions which may be made in the pending appeals at the time of final hearing.

In pursuance of the above decisions, the Central Government proceeded with the procedural formalities for amending Section 13 of the Act to give effect to these executive decisions. After completion of the procedural formalities a Bill further to amend the Act was introduced in the Rajya Sabha on 12.3.2001 with the following Statement of Objects and Reasons thereof:

"1. The Indian Medical Council Act, 1956 contains provisions in Sections 12, 13 and 14 with a view to recognizing medical qualifications granted by medical institutions in foreign countries.

2. Over a period of time it has come to notice that a large number of private agencies sponsor students for medical studies in institutions outside India for commercial considerations. Such students also include the students who did not fulfil the minimum eligibility requirements for admission to medical courses in India. Serious aberrations have been noticed in the standards of medical education in some of the foreign countries which are not at par with the standards of medical education available in India. Due to lack of uniformity in the standards of medical education in various foreign countries, it has been decided that a provision should be made in the Indian Medical Council Act, 1956 to enable the Medical Council of India to conduct a screening test in order to satisfy itself with regard to the adequacy of knowledge and skills acquired by citizens of India who obtain medical qualifications from universities or medical institutions outside India before they are granted registration to practice medicine in India.

3. Further, issue of prior eligibility certificate by the Medical Council of India would ensure that only those candidates who conform to the Council norms of admission to the medical college in India would go for undergraduate medical education outside India.

4. The Bill seeks to achieve the above objects.

C.P.THAKUR
NEW DELHI
THE 2ND MARCH, 2001."

The Bill being after passed by both the Houses of the Parliament, the Section 13 of the Act was amended. It was to come into force from the date it was notified in the Gazette of India.

On 28.9.2001 in accordance with the provisions of the Indian Medical Council (Amendment) Act, 2001 (for short "amending Act of 2001") MCI submitted to the Central Government the drafts of the "Screening Test Regulations", 2002 and "Eligibility Requirement for taking admission for an Undergraduate Medical Course in Institutions Abroad Regulations, 2002" for obtaining the previous approval of the Central Government before its notification in the Official Gazette by the MCI under Section 33 of the Act. While forwarding the draft regulations the MCI indicated in its communication dated 28.9.2001 that in accordance with the amending Act of 2001 the power to specify the date from which the provisions of the Act were to take effect vested with the Central Government, such date may be specified by the Central Government while according its approval to the draft regulation. Accordingly, while returning the draft regulations to the MCI after its approval through its communication dated 13.2.2002 the Central Government specified 15.3.2002 as the date from which the provisions of the Regulations would take effect. The said Regulations were notified by the MCI in the Official Gazette on 18.2.2002. Further, in accordance with the amending Act of 2001 it is the Central Government which has specified 15.3.2002 as the date from which no Indian citizen with a foreign primary medical qualification shall be granted registration, whether provisional or permanent, to practice medicine in India.

Appeals filed by the MCI were finally decided by this Court by passing a common judgment dated 8.3.2002 in CA No. 2779 of 2000 \026 Medical Council of India Vs. Indian Doctors from Russia Welfare Associations & Ors., with connected matters reported in 2002 (3) SCC 696. It was noticed by the Government of India that there were number of persons who applied to MCI for grant of provisional registration after completion of their degrees abroad prior to 15.3.2001 but were not granted provisional registration by MCI for various reasons including that they have not undergone complete duration of six years of the medicine course from institutes recognised by the MCI and those who did not fulfil the minimum eligibility criteria for joining medical course laid down by the MCI at the time of their admission in the medical institutions abroad and came back with medical degrees which were not recognised by the MCI. In order to regulate the registration to such persons who had completed their degrees abroad prior to 15.3.2001, the Government framed guidelines dated 15.3.2001 which were placed before the Court. The Court took note of the provisions of amended Section 13 of the Act and the fact that the same had been published in the Gazette dated 18.2.2002 by the MCI after obtaining the approval from the Government of India. The guidelines dated 15.3.2001 were approved by this Court in exercise of the power under Article 142 of the Constitution. The guidelines were approved by way of one time measure and it was observed that future cases will be governed by the revised guidelines framed by the MCI as approved by the Government.

FACTS IN THE PRESENT CASE:

Broadly speaking writ petitions can be divided into two groups. In the first group would fall the writ petitioners who went to prosecute their M.D. Physician course in the year 1994 (hereinafter referred to as "the 1994 batch") and the second group which went in the year 1995 and afterwards (hereinafter referred to as "the second group").

Writ petitioners went to various countries forming part of erstwhile USSR for studying M.D. Physician course which is equivalent to MBBS in India. As per averments made in the writ petitions all the writ petitioners were eligible as per eligibility criteria prescribed by MCI for admission to MBBS course. They undertook one year preparatory course which comprises of Biology, Physics, Chemistry and Russian language. At the end of the said preparatory course, a written examination was conducted by a committee appointed and selected by the Ministry of Health care of the State in which the said institute and university was situated. An oral test for proficiency and understanding in Russian language was conducted by the committee. The students in order to be eligible for M.D. Physician course were required to pass the merit based examination with minimum of 60% marks in aggregate. Admission to the M.D. Physician course was based on the marks obtained by students in the admission test. Students who failed to secure 60% marks in the preparatory course were returned back to India without getting admission in the medical course. Some medical institutions conducted their own admission tests and only those who qualify on merit were offered the M.D. Physician course.

After successful completion of the preparatory course and selection for the M.D. Physician course the petitioners undertook the 6 years medical course. The medical course comprises of 12 semesters of six months duration each. Semester examinations were conducted at the end of each semester which the candidate was mandatorily required to pass in order to advance further. In the sixth year the petitioners underwent internship as per the Rules and Regulations prevailing in the respective countries. The batch of 1994 after undergoing full length of their medical education completed their M.D.

Physician course in June 2001 and the petitioners who prosecuted their M.D. Physician course between 1995 \026 2002 completed the same in June 2002. The petitioners who joined the course in the year 1996 completed their course in 2003. The petitioners who joined in the years 1999 and 2000 are yet to complete their courses.

So far as the batch 2001 pass outs are concerned, they were granted provisional registration by the MCI under the interim orders of this Court but were denied permanent registration. 2002 batch pass outs were refused provisional/permanent registration by the MCI. Aggrieved against the denial of permanent registration petitioners filed the writ petitions in this Court invoking writ jurisdiction under Article 32 of the Constitution, inter alia, alleging that:

The Indian Medical Council Act, 1956 was amended by the Indian Medical Council (Amendment) Act, 2001 and the said Amendment Act was published in the Official Gazette on 3.9.2001 after receiving the assent of the President of India. The unamended Section 13 (3) of the Act, medical qualifications granted by medical institutions included in Part II of Third Schedule of the Act are recognised medical qualifications and persons possessing medical qualifications are entitled for registration in India. However, by the said amendment Section 13 (3) of the Act was amended and it was provided that such medical qualifications shall henceforth be recognised medical qualifications only "before such date as the Central Government may, by notification in the Official Gazette, specify". In the Amending Act, it has been left to the Central Government to apply its mind as to the date from which the amendment was to be given effect to. While considering such date the Central Government had to take into account the rights of the students/doctors who had already left for studies of MBBS or equivalent courses in other countries including the newly created States out of the erstwhile USSR. After consideration, the Central Government, in its discretion, was to decide the date from which the amendment was to come into force by publishing it in a Gazette notification.

According to the petitioners no notification by the Central Government has been published in the "Official Gazette" for bringing into operation the amended Section 13 (3) of the Act and as such the un-amended Section 13 (3) would apply in their cases. Section 13 (3) only prescribes two conditions for doctors to be given permanent registration, namely, that he is a citizen of India and has undergone such practical training after obtaining that qualification as required by rules and regulations in force. That the petitioners fulfilled these two conditions laid down in Section 13 (3) and therefore are entitled to be registered without the screening test. Insistence of MCI that the petitioners should first clear the screening test and only then they can be granted provisional/permanent registration was ultra vires of the Act and therefore void. According to them, the notification published by the MCI did not amount to issuance/publication of the notification by the Government of India. That the Central Government being a delegatee under the Act to notify the date could not abdicate/delegate its functions and entrust to any other autonomous body including the MCI. That if the power is conferred to do official acts in a certain way they have to be done in the manner prescribed or not at all. Their case is that since Central Government has not notified the date by publication in the Official Gazette the amended Section 13 (3) has not taken effect in law and the unamended Section 13 (3) of the Act shall apply as if the amendment has not come into force.

Another point raised by the petitioners is that the requirement of passing the screening test under Section 13 (4) (a) and (b) are not applicable to the persons with "recognised medical qualifications" covered by Section 13 (3) of the Act. That the screening test provided is wide-ranging test covering the entire five year course to be tested

through multiple choice examinations in two days would result into large scale failures and is as such unreasonable. Instead of being subjected to a test the students can be asked to do extra internship. That the screening test is disproportionate and unreasonable response in the light of the fact that till 2000, and even thereafter, extra internship was found to be an adequate protection of the educational and public interest. Even if the screening test is to apply it should be applied prospectively from 2006-2007 so that students who had joined the course earlier than 2000-2001 are protected from screening test but required to do extra internship.

MCI in its counter-affidavit after tracing out the entire background of facts narrated in the foregoing paragraphs contended that the writ petitions were misconceived and deserved to be dismissed. According to them any candidate who was seeking provisional or permanent registration from the MCI under the provisions of the Act after 15.3.2002 is mandatorily required to qualify the screening test. That each candidate after completing 6 years of teaching and training in the medicine course is required to undergo compulsory internship of 1 year after obtaining the qualification. The contention of the petitioners that they cannot be subjected to the screening test because the Central Government has not issued any notification in the official Gazette specifying the date is incorrect and unsustainable in law. That it is the Central Government which has specified the date of 15.3.2002 to bring the regulations in force. This date so specified by the Central Government was published in the official Gazette as a part of the regulation and therefore all the contentions to the contrary in the writ petition were misconceived, incorrect and therefore denied. That issues raised in the present petition were subject matter of Medical Council of India (supra), in which this Court after hearing the parties and perusing the documents placed on the record conclusively decided that all the candidates who applied to MCI for provisional registration after 15.3.2001 would become eligible to seek permanent registration only after doing one year internship and passing the screening test. In terms of the orders of the Court they all fall under the provisions of Screening Test Provisions of 2002 and are required to qualify the screening test before they are granted registration to practice medicine in India. That it is an admitted case that the petitioners obtained their medicine qualifications after 15.3.2001. They obtained their provisional registration enabling them to do mandatory internship of one year around September, 2001. They are seeking grant of permanent registration after 15.3.2002 and therefore are clearly under the statutory regulation to qualify in the screening test. Similarly, the other contentions raised by the petitioners in the writ petitions were also denied.

Counsel for the parties were heard at length on the points raised in the writ petitions on 28 and 29th April, 2002. When the hearing of the case was nearing the conclusion the Bench put it across to the counsel for the parties that if the Court forms an opinion that the students who are graduating from foreign universities and specially from the universities of erstwhile USSR should undergo a screening test and practical training before being held entitled to permanent registration for medical practice in India than what should be the nature, content and methodology of test and who should conduct it? Learned counsels for the respondents agreed to hold high level consultation and come back with their suggestions. Counsel for the petitioners stated that they would hand over to the counsel of Union of India and the MCI their suggestions within a week. Respondents were put at liberty to consult the National Board of Examinations and such other expert bodies as they deemed fit. The petitioners were permitted to nominate any two representatives of theirs who should be present at the time of hearing in the process of finalising the nature, screening and methodology of the test proposed. The matter was adjourned to 12th July, 2004.

Union of India in compliance with the order dated 29th April, 2004 filed an affidavit stating therein that the suggestions received by the petitioners were initially considered in a joint meeting called by the Union of India on 23.6.2004 under the Chairmanship of the Joint Secretary (Medical Education) in the Ministry of Health and Family Welfare and attended by the members of the Sub-Committee constituted by the MCI for this purpose and a representative from the National Board of Examinations, Delhi. In this meeting it was decided to afford personal hearing to two of the representatives of the petitioners in its next meeting scheduled for 30.6.2004 to finalise the nature, content and methodology of the screening test. In the meeting held on 30.6.2004 in addition to the representatives from MCI, National Board of Examinations, two representatives from the Directorate General of Health Services were also associated to obtain their expert opinion in the matter. Representatives of the petitioners were heard by the Committee.

Suggestions made by the students-petitioners for permitting extra period of internship over and above the normal one year of internship in lieu of screening test was not found to be acceptable, the same being contrary to the IMC (Amendment) Act, 2001. Similarly, suggestion for grant of provisional registration to do one year internship in India without having to pass the screening test was also found not to be acceptable being contrary to the IMC (Amendment) Act, 2001. Suggestion put forth by the petitioners for exclusion of the pre-clinical and para-clinical entirely from the screening test was also not found to be acceptable. It was reiterated that adequate knowledge in these subjects was essential to undertake clinical practice. However, taking into consideration the difficulty level expressed by the petitioners it was recommended that question of the screening test may be put in the ratio of 1/3rd from pre-clinical and para-clinical subjects together and the remaining 2/3rd from clinical subjects.

In the meeting held on 23.6.2004 while considering the written submissions made by the petitioners, for exempting them from appearing again in papers qualified by them in previous attempts, the members had agreed to the said suggestion. It was agreed that the number of papers in the test could be three, one paper consisting of 50 questions each on pre-clinical and para-clinical subjects; second paper consisting of 100 questions on medicine and allied subjects and the third paper consisting of 100 questions on surgery and allied subjects including Obstetrics and Gynaecology. The students were to obtain a minimum 50% marks in each paper which they could clear in one or more attempts having not to reappear in papers qualified in the previous attempts. Wherever they qualified two of the three papers with the minimum of 50% marks while attempting the last paper they could be given grace marks upto 5 so as to declare them pass in the screening test. This was done on the pattern of the University examination for MBBS in India.

However, during the oral submissions in the meeting held on 30.6.2004 the representatives of the petitioners were unanimous in their view that the number of papers in the screening test be reduced to just one, either on the clinical subjects only or if need be with very minor percentage of questions on pre-clinical and para-clinical subjects. For the sake of convenience in conducting the test, the paper can be divided into two parts, the questions on pre-clinical and para-clinical subjects forming part I and the questions on clinical subjects forming part II. A student could be declared as pass if he secured a minimum of 50% marks in both the papers combined. In this scheme the test was to be conducted on the basis of single paper without any facility of grace marks. In case of failure the student is required to attempt the paper again in both the parts of the papers, i.e., in Part I and II. Suggestion from the students that pass percentage be

reduced below 50% was not found to be feasible and acceptable as the same had to be in tune with the minimum pass percentage fixed for MBBS examination. National Board of Examinations was to conduct the test and the level of questions put in the examination was to be at the level of final year MBBS only and not at the level of Post Graduate Entrance Examination.

The minutes of the meeting held on 30.6.2004 were approved by the Government and forwarded to the MCI and the National Board of Examinations for further appropriate action. MCI has also approved the minutes of the meeting held on 30.6.2004.

In response to the affidavit filed by the Union of India petitioners filed their rejoinder. They reiterated that it would be difficult for the students to clear the screening test at this belated stage.

Counsel for the parties had been heard at length.

Main thrust of the submissions made on behalf of the petitioners is that all the petitioners have studied full length of the course from medical institutes/Universities which are recognised by the MCI. They did not suffer from any disqualification or ineligibility and therefore they cannot be subjected to any condition of screening test. That the judgment of this Court in Medical Council of India (supra), was in respect of those Indian students from Russia who had suffered one or the other kind of disqualification or ineligibility. There was not a single case as of the petitioners herein who do not suffer from any disqualification and/or ineligibility. The petitioners who did not suffer from any disqualification or ineligibility and have studied their entire course of M.D. Physician (which is equivalent to MBBS in India) from Medical Institute or University recognised by the MCI under the Act could not be subjected to qualifying screening test. That the law laid down by this Court in Medical Council of India (supra), is not applicable to the petitioners. Another submission made on their behalf is that the amended Act was to come into force from the date to be notified by the Central Government and since the Central Government has not notified the date by publishing it in the official Gazette the same has not come into force. That the Central Government did not have any jurisdiction to further delegate the power to publish the notification in the official Gazette to the MCI. A delegatee of the power under the Act could not further delegate its functions unless so authorised under the Act.

As against this the case of the respondents is that standard of medical education cannot be permitted to be lowered in the larger public interest. A person who is not duly or adequately qualified cannot be permitted to administer public health care to the public at large to their detriment. That the cut off date was fixed and approved by the Central Government which has been published in the official Gazette which is sufficient compliance and the amended provision has come into force. That the issues raised in these writ petitions are not res integra and they stand concluded by the three-Bench judgment of this Court in Medical Council of India (supra).

The decision of this Court in Medical Council of India (supra), is required to be analysed in depth. Students mainly being of 1997-1998 pass outs who were affected by the action of the MCI refusing the grant of registration approached various High Courts agitating their grievances against the MCI and praying for grant of provisional/permanent registration. Initially the High Courts granted the reliefs prayed for by such affected students and directed the MCI to grant them provisional/permanent registration. The MCI being aggrieved filed appeals against the judgments of the High Courts in which leave was granted. During the course of the hearing of the appeals on different occasions the Court made certain observations

keeping in view the interest of all concerned, i.e., standards of medical education, students and the public health in general. The Court asked the Government of India to formulate an appropriate policy bearing in mind the human problem arising in relation to the doctors in question. Section 13 of the Act was thereafter amended by the Act of 34 of 2001 providing for to cover situation as arising in the cases before the Court.

The Court noted that the questions for conduct of the screening test and for issue of eligibility certificate by the MCI to the students proceeding abroad for studies in medicine were approved by the Government of India and sent to MCI. The MCI sent the same on 18.2.2002 to the Government of India press for publication in the Gazette, which was published in the official Gazette on 15.3.2002. After noting the provisions of amended Section 13 of the Act and the fact that the same have been published in the Gazette dated 18.2.2002 by the MCI after obtaining the approval from the Government of India, it was observed:

"5. Under the provisions of the Act a person has to successfully complete compulsory internship of one year after getting provisional registration and all persons who applied for provisional registration and have to do the internship on or after 15.3.2001 will be required to qualify the screening test as per the provisions of the Screening Test Regulations, 2002, as they would become eligible for permanent registration on or after 15.3.2002, that is, after successful completion of one year internship. However, the Government noticed that there are a number of persons who have applied to MCI for grant of provisional registration after completion of their degree abroad prior to 15.3.2001 and have not been granted provisional registration by MCI for various reasons, such persons fall into the following categories:

(a) those who did not undergo the complete duration of six years of the medicine course from institutes recognised by MCI;

(b) those who did not fulfil the minimum eligibility criteria for joining medical course laid down by MCI at the time of their admission in the medical institutions abroad, particularly in the erstwhile States of USSR; and

(c) those who came back with medical degrees which are not recognised by MCI."

Under the provisions of Amended Act a student was required to successfully complete compulsory internship of one year after getting provisional registration. The students who applied for provisional registration after 15.3.2001 were required to do one year of internship and to qualify the screening test as per the Screening Test Regulations, 2002. The Government noticed that there are number of persons who applied to MCI for grant of provisional registration after completion of their degree abroad prior to 15.3.2001 but were not granted provisional registration by MCI for various reasons including that they have not undergone complete duration of six years of the medicine course from institutes recognised by the MCI; and those who did not fulfil the minimum eligibility criteria for joining medical course laid down by the MCI at the time of their admission in the medical institutions abroad and those who came back with medical degrees which were not recognised by the MCI. In order to regulate the registration to such persons who had completed their degree

abroad prior to 15.3.2001, the Government framed the following guidelines which were placed before the Court.

"6. In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15.3.2001, the following guidelines are placed before this Court by the Government of India:

(A) The case of all persons who applied for registration to MCI prior to 15.3.2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:

(i) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in a recognised institution plus the internship, would be seven years, which is the requirement even otherwise.

(ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.

(B) All students who have taken admission abroad prior to 15.3.2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations, 2002 shall be allowed to appear in the screening test even if they also come in the categories of circumstances contained in (A) (ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining an undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15.3.2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15.3.2002. From 15.3.2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine.

(C) The categories of students not covered in (A) (i) and (ii) above and whose entire period of study has been in a medical college not recognised by MCI, will be allowed to appear in the screening test for the purpose of their registration provided they fulfil all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be a qualification recognised for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling the minimum eligibility qualification laid down by MCI for taking admission in an undergraduate medical course in India. They shall not be entitled to any relaxation."

The Court approved the guidelines placed before the Court in exercise of powers under Article 142 of the Constitution and made them applicable to all such persons who were similarly situated whether they were before the Court or not. The Court pointedly held that in respect of those who have already applied for registration to MCI, the same shall be granted or refused within a period of 15 days in terms of the order passed and on the grant of such registration the students shall undergo internship or the housemanship, if needed. It was made clear that guidelines approved by the Court was by way of one time measure. But for future cases it was observed that they shall be governed by the revised regulations framed by the MCI as approved by the Government. It was observed:

"7. In the special features and circumstances arising in these cases, it is unnecessary to consider the various contentions urged on behalf of the parties but we propose to dispose of these matters by approving the guidelines set forth above in exercise of powers under Article 142 of the Constitution and these guidelines will be applicable to all such persons who are similarly situate, whether they are parties before this Court or not. In respect of those who have already applied for registration to MCI, the same shall be granted or refused within a period of 15 days from today in terms of this order. On grant of such registration, the students shall undergo the internship or the housemanship, if needed. It is made clear that these guidelines approved by us are by way of a one-time measure. Future cases will be governed by the revised Regulations framed by MCI as approved by the Government.

8. The orders of the High Courts shall stand displaced by this order and these appeals shall stand disposed of accordingly. Any proceeding pending in any High court relating to these matters shall stand withdrawn to this Court and disposed of in the same terms as aforesaid."

[Emphasis supplied]

In Medical Council of India (supra), this Court was seized of the issues which have been raised in these petitions. The Court noted that it is the Central Government which had fixed the cut off date and had asked the MCI to get it published in the official Gazette which was duly done on 15.3.2002. The Court after reproducing the regulations came to the conclusion that persons who applied for provisional registration and have to do the internship on or after 15.3.2001 will be required to qualify the screening test as per the provisions of the Screening Test Regulations, 2002, as they would become eligible for

permanent registration on or after 15.3.2002, i.e. after successful completion of one year internship. Government taking notice of the fact that there are number of persons who had applied to MCI for grant of provisional registration after completion of their degrees prior to 15.3.2001 formulated guidelines to grant registration to the such persons who had completed their degrees abroad prior to 15.3.2001. These guidelines were approved by the Court as one time measure but it was held that in future all cases will be governed by the revised regulation. This observation of the Court forecloses the contentions which have been raised by the petitioners in these petitions regarding the coming into force of the amended Act as well as the applicability of the amended provisions to the students who have applied for registration after 15.3.2001.

Students who passed the medicine course in 2001 must have joined the language course in the year 1994 and the medicine course in the year 1995. Students who passed the medicine course in 2002 must have joined the language course in the year 1995 and the medicine course in the year 1996. Similarly, students who joined the medicine course in 1997, 1998, 1999, 2000 and 2001 and prior to 15.3.2002 shall also be governed by the screening test regulation even though they have joined the medicine course prior to the coming into force of the screening test regulation on 15.3.2002. Thus the students who passed the medicine course in 2001, 2002 are not different from the students who have passed or will pass medicine course in 2003, 2004, 2005 and 2006 and thereafter respectively.

Candidates who applied to MCI for provisional registration after 15.3.2001 would complete their one year internship after the cut of date of 15.3.2002. They would become eligible to seek permanent registration after the commencement of the provisions of the Screening Test Regulations, 2002. In terms of the orders of this Court in Medical Council of India (supra), they all fall under the provisions of the Screening Test Regulations, 2002 and were required to qualify the screening test before they are granted registration to practice medicine in India. The grant of provisional registration to them by MCI under Section 25 of the Act to do the one year internship did not provide them with any automatic right for grant of permanent registration thereafter since Section 25 of the Act makes it clear that provisional registration could be granted for the purpose of undergoing the practical training and for no other purpose.

Under the Amendment Act 34 of 2001 the cut off date was to be specified by the Central Government. It is not in dispute that the cut off date was specified by the Central Government. The executive policy which was prevalent before 2001 has been given the shape of legislative policy. Such legislative policy having regard to the purposes and objects the MCI seeks to achieve can neither be said to be unreasonable nor arbitrary in terms whereof the student obtaining a degree from a foreign university is subject to a screening test.

There is sufficient and substantial compliance with the provisions of Section 13 (4A) of the Act by the Government of India. It is the Government of India which had fixed 15.3.2002 as the date for bringing into force the screening test regulations. Government of India in its affidavit filed in January 2002 as specifically stated that it is the Government of India which had fixed 15.3.2002 as the date for bringing the screening test regulation.

Suggestion of the petitioners that they should be allowed to join the internship by grant of provisional registration without qualifying the screening test whereby they can involve themselves in the patient care and management cannot be permitted in the larger public interest. Besides the above this suggestion is contrary to the Regulation 3 of the Screening Test Regulations, 2002 and to the observations in

para 4 of the judgment in Medical Council of India (supra).

Regulation 3 of the Screening Test Regulations, 2002 provides that provisional registration can be granted to the candidate enabling him to start internship for practical training involving patient care and management only after qualifying the screening test. It is not permissible to grant provisional registration to a candidate who has not undertaken internship at the recognised medical institution abroad after completion of six years of medicine course without qualifying the screening test.

MCI is the expert body which can lay down the criteria for grant of the permanent registration to a person to practice medicine and involving himself in the patient care and management. Otherwise also we are not inclined to permit the petitioners to practice medicine overriding the provisions of the Act as the Court has to take into consideration the interest of the public at large as well. A person who is not duly qualified as prescribed by the MCI cannot be permitted to involve himself in public health care and play with the lives of human beings. It is not for this Court to decide as to who is duly qualified to practice medicine. MCI being the expert body is the best judge to do so. After a thorough examination of the entire issue the MCI has come to the conclusion that after disintegration of USSR serious aberrations in the system of recruitment and admission of students in institutions located in Russia, there was a decline in the standards of medical education in these countries. In this backdrop the MCI keeping in view the interest of the public at large and the students passing from these institutions decided that the students would be required to do internship for one year as well as to qualify the screening test before they could be given a permanent registration involving themselves in the public health care.

Petitioners are not being debarred from starting medical practice in India but they are merely to undergo screening test as provided in the statutory regulation. The policy decision to subject the students to undergo a screening test has been upheld by this Court in Medical Council of India (supra).

The suggestion on behalf of the petitioners that only one paper instead of three with less weightage in the screening test be given to the pre-clinical and para-clinical subjects taught in the initial years of the medicine course has been accepted. The suggestion that the extra internship be provided in lieu of the screening test and that the candidates be permitted to join the internship straightaway without qualifying the screening test cannot be accepted being contrary to the statutory regulations and against the public interest.

Minutes of the meeting held on 30.6.2004 which have been approved by the Government of India and the MCI are approved. In future the screening test would be conducted as per the guidelines laid down in the meeting held on 30.6.2004.

For the reasons stated above, we do not find any merit in these writ petitions and Civil Appeal and dismiss the same with no order as to costs.