

The High Court of Madhya Pradesh Bench at Indore

Case Number	W.A. No. 743/2021
Parties Name	Dr. (Smt.) Amita Gupta Vs. State of M.P. & Anr.
Date of Order	10/11/21
Bench	<u>Division Bench:</u> Justice Sujoy Paul Justice Pranay Verma
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	YES
Name of counsel for parties	Shri L.C. Patne, learned counsel for the appellant. Shri Pushyamitra Bhargav, learned Additional Advocate General for the respondents / State.
Law laid down	<p>*Section 10A & 11 of the Indian Medical Council Act, 1956 and Medical Council of India, Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 – Scope – The provision relating to “establishment” of medical college and recognition of a course” are two distinct and different provisions which are dealt with by different statutory provisions and method.</p> <p>*Section 11(2) r/w Notification and corrigendum – A conjoint reading of Section 11(2), original Notification of 1.4.2019 and corrigendum leaves no room for any doubt that the MCI has given recognition to the MD course of MGM College w.e.f. 2017.</p> <p>*Interpretation – Notification/Corrigendum – The appellant completed MD course in 2017. By a Notification dated 01/04/2019, initially MCI recognised the MD courses of said college from 2019. However, by way of amendment/corrigendum, the said course was recognised from 2017. The contention of State is repelled that recognition has to be read from 2019. This argument, if accepted, will lead to ambiguity and absurdity. There shall be no</p>

	<p>explanation between 2017 and 2019 despite the fact that MD course of 2017 was recognised. A proper interpretation which eschews the ambiguity and absurdity must be accepted.</p> <p>*Interpretation- This is golden rule of interpretation that hardship, inconvenience, injustice, absurdity and anomaly to be avoided. Even if grammatical construction leads to any absurdity or inconsistency, it may be departed from, so as to avoid that absurdity and inconsistency.</p> <p>*Principle of estoppel/waiver – The appellant was duly selected and was found to be eligible. Appointment was declined. During the pendency of writ appeal, two more advertisements to fill up same posts were issued, but none could be selected. Since appellant assailed the inaction during the lifetime of select panel, neither principle of estoppel nor waiver can deprive her from the fruits of litigation.</p>
Significant paragraph numbers	15 to 30

ORDER
(10th November, 2021)

Sujoy Paul, J.:

This intra-court appeal filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhinyam, 2005 assails the order of Single Bench dated 29.04.2019 (Annexure-A/1) passed in W.P. No.29018/2018 as well as order dated 09.08.2021 (Annexure-P/2) passed by in R.P. No.945/2019.

02. The admitted facts between the parties are that the appellant completed her M.B.B.S. Course from Government Gandhi Medical College, Bhopal and said qualification was duly registered with the Medical Council of India (MCI) on 13.08.2012. The appellant got admission in MD (Bio-chemistry) in MGM Medical College, Indore, which is a Government institution on 05.08.2014. Indisputably, MGM Medical College is a MCI recognized medical college. The appellant

completed her MD (Bio-chemistry) Course on 31.08.2017. Pursuant to an advertisement issued by the respondents inviting candidature for the post of Assistant Professor on 13.04.2018, the appellant submitted her candidature. The appellant was duly selected and was found to be meritorious. Despite selection, the appellant was not served with any appointment order. Aggrieved with the said inaction of the respondents, W.P. No.29018/2018 was filed seeking writ of mandamus for issuance of appointment order. The said writ petition came to be dismissed on 29.04.2019.

03. Shri L.C. Patne, learned counsel for the appellant submits that respondents admitted that appellant is eligible, meritorious and selected for the post in question, but could not be appointed for want of 'additional registration' by MCI. The Writ Court by assigning reason in para – 13 and 14 of the order impugned opined that appellant could not furnish the 'additional registration' and respondent No.2 did not commit any illegality in demanding the additional registration of MD. R.P. No.945/2019 was filed on the strength of the document dated 29.04.2019 and documents dated 01.04.2019 ad 02.07.2019 (page-149 and 150). On the strength of these documents, the appellant sought review by contending that a cumulative reading of these documents shows that Letter of Permission was received by the Government MGM College way back on 31.03.2013. Apart from this, corrigendum dated 02.07.2019 makes it clear that first schedule of previous notification dated 01.04.2019 stood amended whereby qualification of MD acquired by appellant in the year 2017 is also duly recognized under Section 11 of the MCI Act.

04. The review petition was dismissed by the learned Single Judge by holding that additional registration certificate is received on 25.06.2019, and therefore, on the last date of submission of candidature (cut off date) i.e. 20.04.2018, the appellant, admittedly did not have essential certificate to show that her MD course is recognized

by the MCI.

05. Criticizing both the above orders, Shri Patne, learned counsel for the appellant submits that firstly, MGM Medical College was not only a college which imparted education to the appellant in MD course, it was a recruiting agency / unit for which appellant submitted her candidature and was duly selected. After having received education in MD subject from a Government institution, it was no more open to said institution to say that the qualification so obtained from that college is not valid in the teeth of MCI provisions.

06. Secondly, Shri Patne submits that a careful reading of Schedule-1 appended to Regulation of 1998 and reproduced in para – 7 of the order passed in W.P. No.29018/2018, the expression used is 'recognized medical college'. It is not in dispute that MGM College is a 'recognized' medical college. Apart from this, the notification dated 02.07.2019 leaves no room for any doubt that it is retrospective in nature and grants recognition to the degree of MD obtained by the appellant w.e.f. 2017.

07. To bolster this submission, reliance is placed on the language employed in Section 11(2) of the MCI Act coupled with the 'corrigendum' where the words used are '*when granted*'. It is urged that a conjoint reading of enabling provision namely Section 11(2) r/w notification dated 01.04.2019 and corrigendum dated 02.04.2019 makes it clear like cloudless sky that appellant got recognized qualification in the year 2017. The select list was published on 25.04.2018 and appellant became qualified in the year 2017 itself. Thus, by no stretch of imagination, appellant's qualification can be treated to be valid from 2019 only, the date when notification dated 01.04.2019 was issued. Any other interpretation, Shri Patne submits will lead to absurdity and there will be no explanation about said qualification between 2017 (when appellant acquired the qualification) and 2019 (when first notification dated 01.04.2019) was

issued.

08. Lastly, it is submitted that writ petition was filed on 14.12.2018, before expiry of the life of select list.

09. Shri Pushyamitra Bhargav, learned AAG opposed the said prayer and supported the impugned orders passed by learned Single Judge.

10. By taking this Court to Section 10A and 11 of the MCI Act, 1956, learned AAG submits that the permission to 'establish' a college and grant of 'recognition' to a particular course are two different facets dealt with by two different provisions of the MCI Act. By placing heavy reliance on *(2012) 8 SCC Page 80, MCI vs. Rama Medical College Hospital and Research Center, Kanpur*, Shri Bhargav urged that this judgment, in no uncertain terms, makes it clear that MCI Act gives authority to MCI to take all steps to ensure that a medical institution either at the time of establishment or later at the time of applying for increase in the number of seats has the capacity and necessary infrastructure, not only to run the college, but also to sustain the increase in the number of seats applied for. The recognition can be assumed only when necessary formalities as per Section 11 and Section 26 of MCI Act are fulfilled. By placing reliance on the Notification dated 20.07.2019 whereby medical qualification was recognised from 2017, Shri Bhargava submits that a careful reading of this Notification and the corrigendum shows that it is an amendment to the previous Notification dated 01.04.2019. Thus, even assuming that this corrigendum relates back to the date of original Notification, it will relate back to 1st of April, 2019 and not behind or beyond/prior to that. In this view of the matter, indisputably, on the cut off date, the appellant did not have the recognized MD qualification and, therefore, no fault can be found in the inaction of respondents in not appointing the appellant for want of additional registration.

11. Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998 (Regulations) are also relied upon to contend that the Assistant Professor can be appointed strictly inconsonance with this statutory provision. The advertisement was issued inconnosance with this statutory provision. The appellant did not have the aforesaid qualification.

12. Lastly, Shri Bhargava, learned AAG submits that after the decision of the writ petition, two more advertisements were issued by the respondents to fill up the post in question, but none could fetch any result. He admitted that the post in question is still lying vacant. However, it is argued that since the appellant did not challenge the subsequent advertisements/selections, no relief is due to the appellant and life of select panel is expired.

13. The parties confined their arguments to the extent indicated above.

14. We have heard the parties at length and perused the record.

15. The para 1 of the reply filed in W.P. reads as under:-

(1) That, petitioner has preferred present petition mainly on the ground that she was selected for appointment as assistant professor (Biochemistry) but till date she has not given the joining on the said post.

“In reply to aforesaid contention of the petitioner the answering respondent humbly submits that **though the petitioner was selected candidate but till date she has not submitted the Additional Registration of MD as the time of selection** she has produced the receipt of application for additional registration and therefore selection committee considered her candidature and selected the petitioner under condition to produce the same. **Petitioner is required to submit the additional Registration of MD for being appointed as Assistant Professor.**”

(Emphasis Supplied)

16. Another relevant portion of the said reply reads as under:-

“Petitioner is full filling the basic eligibility norms and therefore, selection committee after considering the merit of the petitioner selected her. Petitioner assured at the fine of selection that she will produce the additional

registration of MD immediately but till this date she has not produced the same.”

(Emphasis Supplied)

17. A plain reading of the reply makes it clear that the respondents categorically admitted that appellant had fulfilled the basic eligibility norms and was found to be meritorious and was accordingly selected. The singular reason for non appointment was that petitioner could not submit additional registration of M.D. It was explained in detail by Shri Bhargava, learned AAG that the 'admission' and 'recognition' are two different facets. As per his stand, the appellant got registration only on 2nd of July, 2019 which cannot be treated to be retrospective w.e.f. from a date which is prior to the cut off date.

18. The order passed in review petition by learned Single Judge shows that learned Single Judge has decided the matter in the same line and opined that the additional registration certificate is received on 25/06/2019 i.e. after the cut off date. Thus, the subsequent Notification/corrigendum did not impress the learned Single Judge.

19. A careful reading of Section 10A and 11 of the MCI Act leaves no room for any doubt that the permission to 'establish' a medical college and grant of 'recognition' are two different aspects governed by two different statutory provisions. The Supreme Court in great detail considered this aspect in the case of *Medical Council of India* (Supra). However, in our opinion, this aspect has no significance in the light of the Notification dated 01/04/2019 and its 'corrigendum' dated 02/07/2019. Before dealing with the same, it is apposite to quote Section *11(2) of MCI Act* which reads as under:-

“(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government, to have such qualification recognized, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it

shall be a recognized medical qualification only **when granted** after a specified date.”

(Emphasis Supplied)

20. The Notification dated 01/04/2019 reads as under:-

Government of India

Ministry of Health and Family Welfare
(Department of Health and Family Welfare)

Nirman Bhawan, New Delhi
Dated the 01 April, 2019

NOTIFICATION

S.O..... In exercise of the power conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical council of India,, hereby makes the following further amendments in the First Schedule to the said Act, namely:-

In the said Schedule -

a) against ' Madhya Pradesh Medical Sciences University, Jabalpur’ under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely:-

2	3
Doctor of Medicine (Bio-Chemistry)	MD (Bio-Chemistry) (This shall be a recognized medical qualification when granted by Madhya Pradesh Medical Sciences University, Jabalpur in respect of students being trained at M G M Medical College, Indore on or after 2018)

Note:

1. The recognition so granted to a post graduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.
2. The procedure for “Renewal' of recognition shall be same as applicable for the award of recognition.
3. Failure to seek timely renewal of recognition as required shall invariably result in stoppage of admissions to the concerned postgraduate Course.

U/12012/13/2019-ME-I [3196841]

(P.K. Bandhyopadhyay)
Under Secretary to the Govt. of India

21. The **Corrigendum** dated 02/07/2019 reads as under:-

Government of India

Ministry of Health and Family Welfare
(Department of Health and Family Welfare)

Nirman Bhawan, New Delhi
Dated the 02 July, 2019

CORRIGENDUM

In continuation to this Department's Notification No.U/12012/13/2019-ME-I [3196841] dated 01.04.2019, and in exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely:-

In the said Schedule -

a) **against “Madhya Pradesh Medical Science University, Jabalpur” under the heading ' Abbreviation for Registration' (column 3), the Doctor of Medicine (Bio-Chemistry) qualification shall be a recognised medical qualification when granted by Madhya Pradesh Medical Sciences University, Jabalpur in respect of students being trained at MGM Medical College, Indore on or after 2017 instead of 2018”.**

U/12012/13/2019-ME-I [3196841]

(P.K. Bandhyopadhyay)
Under Secretary to the Govt. of India

(Emphasis Supplied)

22. The law makers, in our opinion, were conscious about the fact that establishment of college and imparting education is a time taking process. The recognition may come at a later point of time. Thus, a clear expression was used in Sub-Section 2 “that it shall be a recognised medical qualification only when granted *after a specified time*. The highlighted portion of the Notification dated 01/04/2019 and 2nd July, 2019 also makes it clear that recognised medical qualification shall be treated from the date '**when granted**'. By corrigendum, the recognised Medical Qualification was granted for petitioner from 2017, the batch in which appellant has passed the MD course. We find substance in the argument of Shri Patne, learned counsel that any other interpretation will lead to absurdity. In that case, there will be a vacuum between 2017, the year when appellant admittedly passed the MD Course and 2019, when original Notification was issued recognising the MD qualification.

23. This is golden rule of interpretation that hardship, inconvenience, injustice, absurdity and anomaly to be avoided. Even if grammatical construction leads to any absurdity or inconsistency, it may be departed from, so as to avoid that absurdity and inconsistency

(See: (1996) 2 ALL ER 23, p.32; *Mohamadhusen Abdulrahim Kalota Shaikh v. Union of India*, (2009) 2 SCC 1 para 101)

24. As approved by *Venkatarama Aiyar, J.*, “Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. (See: (1998) 3 SCC 23; *Molar Mal v. Kay Iron Works (P) Ltd.*, AIR 2000 SC 1261, P. 1266 *Padmasundara Rao v. State of T.N.*).

25. Thus, a proper and permissible reading of the notification dt. 01.04.2019 and corrigendum leads to the conclusion that petitioner's qualification is treated as 'recognised' by MCI from 2017. In that case, petitioner is having recognised qualification much before the cut off date.

26. It cannot be forgotten that the delay in issuing the Notification and corrigendum etc. is attributable to the MCI/respondents. The appellant cannot be made to suffer for the same.

27. So far argument of Shri Bhargava, learned AAG that life of select list was over during the pendency of writ petition is concerned, coupled with the argument that appellant has not challenged the subsequent selection is concerned, suffice it to say that both the arguments deserve to be rejected in the light of settled legal position. In the case of *Purushottam vs. Chairman, M.SEB*, (1999)6 SCC 49, the Apex Court opined as under:-

“4.The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to

be appointed to the post has been illegally taken away by the employer.”

(Emphasis Supplied)

28. Similarly, in *State of U.P. vs. Ramswarup Saroj, (2000) 3 SCC 699*, the Supreme Court held as under:-

“10. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled by the High Court.”

(Emphasis Supplied)

29. This Court in *Jakir Khan vs. State of MP (2017) V.65 ILR MP* followed the *ratio decidendi* of the said cases. The judgment of *Jakir Khan* (supra) was unsuccessfully challenged by the State in WA No. 882/2016.

30. Thus, in our view, neither principle of estoppel nor waiver can be a reason to deprive the appellant to get the fruits of the litigation. The appellant promptly challenged the inaction of respondents during the lifetime of panel and, therefore, litigation can not be rejected on that ground.

31. In view of foregoing analysis, in our opinion, the learned Single Judge has gone wrong in dismissing WP No.29018/2018 and RP No.945/2019. Resultantly, both the said orders are set aside. The respondents are directed to proceed with the selection and issue the appointment order of the petitioner subject to other formalities. It is made clear that the aspect of recognised qualification of M.D. cannot be an impediment for the petitioner to get the appointment on the post of Assistant Professor. The entire exercise of consideration be completed within 60 days from the date of production of copy of this order. Writ Appeal is allowed.

(Sujoy Paul)
Judge

(Pranay Verma)
Judge