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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 17th August, 2021*

\+ W.P.(C) 8520/2021

MASTER AKASH YADAV MINOR ..... Petitioner
Through Mr. Surendra Kumar Yadav, Advocate

versus

UNION OF INDIA & ORS. ..... Respondents
Through Ms. Seema Dolo, Advocate with Mr. Akhil Kulshreshtha, Advocate for R-3
Mr. T. Singhdev, Advocate with Ms. Michelle B. Das, Advocate for R-4&5

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

Proceedings have been conducted through video conferencing.

CM APPL. 26386/2021 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 8520/2021 & CM APPL. 26385/2021 (Stay)

1. Present writ petition has been preferred seeking the following reliefs:-

"a) Direct NTA/Respondents to allow/permit Petitioner who is 13 months underage for entrance test (NEET-2021) conducted by NTA,

b) Direct NTA/Respondents to amend impugned regulation concerned with minimum age criteria of 17 years as on December 2021 for first year UG medical course for students appearing in entrance test (NEET-2021) by replacing with 15 years similar to JEE-2021 for UG Engineering courses, as it is ultra vires to Indian Medical Council Act 1956.

c) pass such other order or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Petitioner herein passed his matriculation examination in 2019 with 90.2% marks from school recognised by the CBSE and 12th Class examination in 2021 with 89% marks being in the science stream. His date of birth as per the record is 26th January, 2006. By way of the present writ petition, Petitioner seeks a direction to the Respondents to allow the Petitioner to appear in the entrance test (NEET-2021) conducted by National Testing Agency (NTA) and also challenges "Medical Council of India Regulations on Graduate Medical Education, 1997", as amended upto May, 2018, more particularly Regulation 4(1) thereof (hereinafter referred to as "Regulations"). For ready reference, Regulation 4(1) reads as under:-

*"4. **Admission to the Medical Course-Eligibility Criteria :** No candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor or Medicine and Bachelor of Surgery course until he /she has qualified the National Eligibility Entrance Test, and he/she shall not be allowed to appear for the National Eligibility-Cum-Entrance Test until:*

(1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course."

(emphasis supplied)

3. National Testing Agency (NTA) conducts entrance tests for undergraduate programmes for different examinations in different streams. The entrance test in question is the "National Eligibility-cum-Entrance Test" (NEET-2021) which is to be conducted by NTA on 12th September, 2021. As per the Petitioner, when he attempted to fill the online application, he was unable to do so as he was ineligible on account of minimum age limit of 17 years on or before 31st December of the year of the admission, being underage by 12 months and 26 days. Petitioner made a representation dated 14th July, 2021 to the concerned authorities to facilitate in filling up of the online forms ignoring the underage issue. This was followed by reminder representations dated 21st July 2021, 22nd July, 2021, 23rd July 2021 and 28th July, 2021, but there was no response, leading to the filing of the present petition.

4. Learned counsel appearing for the Petitioner contends that the Regulation in question was enacted way-back in the year 1997 and has outlived its utility. The present generation of children mature at an earlier age having the advantage of technological advancements and a better environment for development and grooming, both academically and in terms of intelligent quotient. The two decade old regulation deserves to be quashed being unconstitutional in present times where majority of students are ready to go to universities and colleges at the age of 15. Additionally, in terms of the intelligence level and the marks scored by the students, in 1997 when the impugned Regulation was enacted if a student scored 60% marks in class 12th he was considered intelligent but in today's times, the range of marks for majority of the students is between 85 to 99%.

5. Learned counsel for the Petitioner also contends that Right to Education Act, 2009 has been enacted with the object of achieving opportunity of education to all the children and is a part of Directive Principles of the State Policy under Article 45 of the Constitution of India. He, therefore, submits that denial of opportunity to the Petitioner to appear in the concerned entrance examination is violative of his fundamental right under the Constitution. Learned counsel further submits that the Madras High Court in ***W.P. (C) No. 3367/2021*** titled as ***Minor SP. Shree Harini vs. Union of India & Ors.,*** has allowed the Petitioner therein, who is underage as per the Regulation, to appear for the NEET-2021 and although NTA has filed an appeal before the Division Bench, no stay has so far been granted in their favour.

6. We have heard the learned counsel for the Petitioner and examined his contentions. Succinctly put, Petitioner seeks a direction from this Court to amend Regulation 4(1), as aforesaid, to read down the minimum age of 17 years stipulated therein as 15 years and permit the Petitioner to appear for the NEET-2021, though being underage by 12 months and 26 days. We are afraid that this contention of the Petitioner cannot be accepted by this Court. It is a settled law that prescribing age limits for appearance in entrance examinations is the domain of the concerned authorities, with their expertise in the field. In a writ jurisdiction, it is not open to this Court to decide as to which age would be the most appropriate minimum age for appearing in the entrance examinations. Neither does this fall within the scope of judicial review in a writ jurisdiction nor does the Court have the necessary expertise to alter the age limits to suit a particular examination. Moreover, prescribing the minimum age limit requires an expert opinion with a deeper insight into

the particular examination and the requirements of the academic courses for which the examination is conducted. These are policy decisions and the Petitioner has been unable to point out any arbitrariness or mala fides in the prescription of minimum age of 17 years for NEET-2021.

7. It ought to be kept in mind that the primary role of the Court is to interpret the Rules and Regulations and no interference is called for when the Regulations are unambiguous and the Petitioner has been unable to point out a single reason that appeal to this Court for reduction of the age limit.

8. The matter can be looked into from yet another angle. Petitioner herein seeks reduction of age as he is underage by 12 months and 26 days. In the future, there could be yet another petition where another Petitioner may seek permission to appear being underage by 11 months, followed by another petition seeking reduction by 3 years. Surely, this Court cannot give directions to the Respondents to enact Regulations, which are tailor made to suit the convenience or requirements of the candidates aspiring to appear in the entrance test.

9. Learned counsel appearing for the Respondents, in our view, has rightly relied on a decision of the Allahabad High Court in the case of ***Ankit Chaturvedi vs. Union of India & Others, 2015 SCC OnLine All 9106,*** relevant part of which reads as under:-

> *"6. It would not be out of place to note here that the fact that the petitioner did not qualify the requirements placed under the Regulations aforementioned, is not disputed. The Council has categorically asserted that at the time when the petitioner obtained admission to the foreign medical University, he had not attained the age of 17 years. This according to it was a mandatory requirement irrespective of whether such a corresponding requirement existed under the laws of the*

country where the medical college in question was situate. The above requirements which stands incorporated under the Act of 1956 and is referable to sub-sections (4-A) and (4-B) of section 13 has been upheld by the Apex Court and which lucidly explained the legal position and obligations flowing therefrom in the following terms. The Court refers to the judgment rendered by the Apex Court in Yash Ahuja v. Medical Council of India.

> *60. Then come to the provisions of sub-sections (4-A), (4-B) and (4-C) of section 13 which fall for consideration of this Court. It may be mentioned that sub-sections (4-A), (4-B) and (4-C) have been brought on the statute book by Act 34 of 2001 which has come into force with effect from 3.9.2001. Those provisions read as under:*
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> > *"13. (4-A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Ac I for that person.*
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> > *(4-B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by*

the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4-A):

Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under this sub-section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

(4-C) Nothing contained in sub-sections (4-A) and (4-B) shall apply to the medical qualifications referred to in section 14 for the purposes of that section."

72. Even if the material words of section 13 (4-A) are capable of bearing two constructions, the most firmly established rule for construction of such words is the rule of "purposive construction or mischief rule". This rule enables consideration of four matters in construing an Act—

1) what was the law before the making of the Act,
(2) what was the mischief or defect for which the law did not provide,
(3) what is remedy that the Act has provided, and
(4) what is the reason of the remedy. The rule then directs that the Courts must adopt that construction which suppresses the mischief and advances the remedy. Applying this principle of construction to sub-section (4-A) of section 13 of the Act, this Court finds that the law before

the enactment of the said sub-section was that medical qualifications granted by medical institutions in countries with which there was a scheme of reciprocity included in the Second Schedule, were recognised qualifications for the purposes of the Act. This law continues to be in force even after the enactment of sub-section (4-A).

75. The remedies mentioned in sections 13 (4-A) and 13 (4-B) are prescribed because citizens of India, who have obtained medical qualifications from universities or medical institutions outside India, would be entitled to practise medicine in India and they cannot be permitted to treat other citizens of India with their half-baked knowledge and jeopardise their precious lives. Thus by adopting rule of purposive construction or mischief rule, it will have to be held that the provisions of sub-section (4-A) of section 13 of the Act would also apply to the cases covered by section 12 of the Act.

76. The argument that MCI has admittedly understood and applied the provisions of the Act by releasing press note to mean that the screening test would not be necessary for students who have obtained degree from foreign medical institutions recognised under section 12 of the Act and, therefore, MCI is precluded in insisting that the students, who have obtained degrees from foreign medical institutions, is devoid of merit. It is true that at one stage MCI had released a press note clarifying for the information of the general public that eligibility requirements for taking admission in an undergraduate medical course mentioned in the Foreign Medical Institutions Regulations, 2002 and the Screening Test Regulations, 2002 would not be applicable to the students joining an undergraduate medical course in foreign countries, recognised and included in the Second Schedule under section 12 of the Act. However, this was the understanding of MCI, which is one of the parties before the Court. The scope of section 13 (4-A) is quite clear and

covers all foreign medical institutions falling within the ambit of sections 12 and 13 of the Act.

77. On a close and careful reading, provisions of the amending Act of 2001 with the Eligibility Requirement Regulations and the Screening Test Regulations, both of 2002, it becomes at once clear that MCI is obliged to stipulate the screening test in the case of all those candidates, who obtained medical qualification from medical institutions outside India falling within the purview of sections 12 and 13 of the Act in view of the statutory provisions of section 13 (4-A) of the Act. The press release cannot be interpreted as precluding MCI from canvassing correct import of the provisions of the Act. In any view of the matter, the Court is of the firm opinion that press release by MCI cannot preclude the Court from placing correct interpretation of the Act. Therefore, the said plea has no substance and is hereby rejected."

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8. The other aspect of the matter of which this Court must duly take note of is this. The requirements framed by the Council are statutory and binding upon it. This Court cannot issue a writ which would amount to commanding the Council to either act contrary to the said requirements or in ignorance thereof. Even if there be certain instances where the Council has erroneously issued Eligibility Certificates, such decisions cannot come to the aid of the petitioner. Thus in light of the well settled principle of law that Article 14 of the Constitution of India does not envisage or warrant negative equality. In other words there cannot be an insistence on parity with illegality."

(emphasis supplied)

10. We may in this context also take note of the judgment relied upon by learned counsel for the Respondents by the Rajasthan High Court in the case

of ***Gautam Kapoor vs. State of Rajasthan, AIR 1987 Raj 174,*** relevant part of which reads as under:-

> *"4. It cannot be doubted that a certain degree of maturity of body and mind is essential in a student joining the medical course and it is not unusual to reckon the same with reference to the age of the person. Undoubtedly there may be exception to the general rule, but a general rule is not to be based on exceptions. The Medical Council of India, which is constituted under the Indian Medical Council Act, 1956 and is a body of experts in the field, is also required to prescribe the minimum standards of medical education. It is also empowered by the Act to make Regulations generally to carry out the purpose of the Act and particularly for the matters specified expressly in Section 33 of the Act. One of the recommendations made by the Medical Council of India in exercise of its statutory power is that the minimum age limit of 17 years at the time of entry into a Medical College should be prescribed. There is no dispute that this minimum age limit is being followed throughout the country and for a long time. We have also, therefore, to bear in mind this fact while deciding the question whether such a restriction on age limit can be treated as unreasonable or arbitrary so as to violate Article 14 of the Constitution.*
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> *5. It would be useful in this context to bear in mind the guidance provided by the Supreme Court while construing the validity of such a provision. In (1) Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumarsheth, etc.(1984) 4 SCC 27 : AIR 1984 SC 1543, while interpreting the validity of Regulation made relating to the examination of candidates, their Lordships observed as follows:—*
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> > *"As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational*

institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice."

We must, therefore, give due weight to the recommendation of the Medical Council of India in this behalf which is being followed uniformly for a long time throughout the country and which is undoubtedly based on experience of experts in the field. It is their opinion that the requisite degree of maturity of body and mind for entry into a Medical College is not attained normally before the age of 17 years*. The question, therefore, is whether the opinion of these experts in the field should be substituted by any other opinion, particularly when there is no dispute that a candidate for entry into a Medical College cannot ordinarily be less than 16 years in age since it is not feasible to pass the qualifying examination before attaining the age of 16 years.*

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9. Our conclusion, therefore, is that no invalidity attaches to the impugned provision prescribing the minimum age of 17 years to be completed in the year of admission for entry to a Medical College and that provision cannot, therefore be struck down. This question has, therefore, to be answered accordingly."

(emphasis supplied)

11. In view of the aforesaid, we do not find merit in the contentions of the Petitioner. Insofar as the reliance on the judgment of the Madras High Court

in ***Minor SP. Shree Harini (Supra)*** is concerned, we are informed that the same is pending consideration before the Division Bench of the Madras High Court. Even otherwise, this Court does not agree with the view taken by the Learned Single Judge of the Madras High Court and the directions issued therein, which in any case are not binding on this Court. There is no merit in the writ petition and the same only deserves to be dismissed.

12. With these observations, the writ petition along with pending application is dismissed without any costs.

CHIEF JUSTICE

JYOTI SINGH, J

AUGUST 17, 2021
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