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

+ LPA 457/2024

JIWESH KUMAR & ORS.

..... Appellants

Through: Mr. Kundan Kumar Mishra and Mr.
Jitendra Kumar, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Monika Arora, CGSC with Mr.
Subhrodeep Saha, Advocate for UOI
Ms. Archana Pathak Dave, Sr.
Advocate with Mr. Kumar Prashant,
Mr. Pramod Kumar Vishnoi and Mr.
Avnish Dave, Advs. for R-2

+ LPA 458/2024

PRABHAKAR YADAV & ORS.

..... Appellants

Through: Mr. Kundan Kumar Mishra and Mr.
Jitendra Kumar, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Ankita Chaudhary, Mr. Shreyas
Balaji and Mr. Devansh Chauhan,
Advs. for R-2

%

Date of Decision: 30th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T



MANMEET PRITAM SINGH ARORA, J : (ORAL)

LPA 457/2024

1. Present appeal filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, assails the judgment dated 22nd April, 2024 ('impugned judgment') passed in W.P.(C) 2693/2024, whereby, the Appellants' challenge to the National Exit Test ('NEExT') proposed by Respondent No. 2 under Section 15 of National Commission for Indian System Medicine Act, 2020 ('the NCISM Act'), has been dismissed.

1.1. NEExT is a common final year undergraduate examination to be undertaken before a graduate in any Indian System of Medicine can be given a license to practice as a registered medical practitioner.

2. The Appellants herein are students who are presently pursuing their Bachelor of Ayurvedic Medicine and Surgery (BAMS) and Bachelor of Unani Medicine and Surgery (BUMS) courses from colleges located at various places in India. The duration of the BAMS/BUMS courses being undertaken by the Appellants is 4 ½ years, followed by a 12-month internship. The Appellants are students who have enrolled in these courses between 2017 and 2020, with the exception of Appellant No. 2 who was enrolled in 2014 and is still studying. The Appellants were admitted to the said courses after having cleared the National Eligibility-cum-Entrance Test ('NEET-UG') and/or State level entrance examinations; however, prior to Section 15(1) of the NCISM Act being brought into force.

3. The Appellants state that BAMS/BUMS programmes were, at the time when the Appellants were enrolled therein, governed by the Indian



Medicine Central Council Act, 1970 ('IMCC Act'), Section 17(1) of which provided that a medical qualification included in the Second, Third or Fourth Schedule to the IMCC Act, would be a sufficient qualification for enrolment on any State Register of Indian Medicine. The BAMS and BUMS degrees to which the Appellants aspire are, admittedly, scheduled medical qualifications.

The enactment of NCISM Act and repeal of IMCC Act

4. The impugned judgment sets out the facts leading to the challenge raised by the Appellants to the requirement of writing NExT Exam, which is not disputed and read as under:

5. On 20th September 2020, the NCISM Act was enacted. It was published in the Official Gazette on 21st September 2020. The proviso to Section 1(3) of the NCISM Act provided that different dates could be appointed for different provisions of the Act and that a reference in any such provision to the commencement of the NCISM Act would be construed as a reference to the coming into force of that provision.

6. The dispute in these appeals relates to Section 15 of the NCISM Act. Sub-section (1) thereof states that "a common final year undergraduate examination to be known as National Exit Test shall be held for granting of a licence to practice as a medical practitioner in Unani or Ayurvedic medicine and for enrolment in the State or National Register for that purpose. Section 15(3) stipulates that the NExT shall become operational on such date, within three years from the date on which the NCISM Act came into force, as may be notified by the Central Government. Vide Notification SO 2278(E) dated 11th June 2021, the Central Government notified 11th June 2021 as the date on which all provisions of the NCISM Act, except Sections 3, 4, 5, 6, 8, 11, 18, 19, 20, 21, 54 and 55 – which would include Section 15



– would come into force. Thus, Section 15 of the NCISM Act came into force with effect from 11th June 2021.

7. Section 58(1) of the NCISM Act repealed the IMCC Act with effect from such date as would be notified by the Central Government. Simultaneously with Notification SO 2278(E) bringing into force, among other provisions, Section 15 of the NCISM Act, the Central Government, vide Notification SO 2279(E), also issued on 11th June 2021, repealed the IMCC Act with immediate effect.

8. With effect from 11th June 2021, therefore, the IMCC Act stood repealed and Section 15 of the NCISM Act came into force.

9. Section 15(1) of the NCISM Act requires an examination, to be known as the NExT, to be undertaken before a graduate in any Indian System of Medicine can be given a licence to practice as a registered medical practitioner. The Appellants, who are presently pursuing their BAMS and BUMS courses, seek a declaration that this requirement would not apply to them, as they joined their BAMS and BUMS courses before Section 15(1) was brought into force on 11th June 2021.

The question for determination

10. The question for determination, therefore, before the learned Single Judge was whether a student who had joined the undergraduate course in an Indian System of Medicine before 11th June 2021 would be required to undertake the NExT before she, or he, is given a licence to practice as a registered medical practitioner.

11. The Appellants contend that as the IMCC Act which was in force on the date when the Appellants enrolled in their BAMS/BUMS courses did not envisage the requirement of any intervening examination having to be undertaken between the acquisition, by them, of their BAMS/BUMS degrees



and their registration as licensed Ayurvedic or Unani medical practitioners, the requirement of clearing the NExT, which was a creature of a later date, could not be thrust on them. It is stated that the right of the Appellants to practice as Ayurvedic or Unani practitioners consequent to obtaining their BAMS/BUMS degrees, should be automatic as was envisaged by erstwhile Section 17 of the IMCC Act and not subject to the petitioners clearing the NExT exam, as envisaged by Section 15(1) of the NCISM Act.

12. The Appellants contend that BAMS/BUMS students who enrolled themselves prior to 11th June 2021 should directly be eligible to undertake an internship and be registered as Ayurvedic/ Unani Medical practitioners, consequent on their obtaining BAMS/BUMS degrees, as was envisaged by Section 17 of the IMCC Act and be exempted from undertaking the NExT.

13. The Appellants state that the National Medical Commission ('NMC') has also enacted 'The National Capital Commission National Exit Test Regulations' ('NExT 2023'); however, NMC on 01st August, 2023 has clarified that the NExT for the Bachelor of Medicine and Bachelor of Surgery ('MBBS') students will be held in the year 2028 for the MBBS batch of 2024. It is stated that therefore, the condition of writing an Exit Examination has been applied by NMC prospectively for the MBBS students.

14. The Appellants state that similarly Pharmacy Council of India notified 'Diploma in Pharmacy Exit Examination Regulations, 2022' on 24th February, 2022, which introduced Diploma in Pharmacy Exit Examination. It is stated that the said Exit Examination has, however, been made applicable by the Pharmacy Council of India for students of 2022-24 session, thereby, it has been imposed prospectively.



15. The Appellants state that they are similarly placed as the MBBS and Pharmacy students; however, they are unreasonably expected to write the Exit Examination due to Section 15(1) of the NCISM Act being made effective immediately.

Submissions of the counsel for parties

16. Learned counsel for the Appellants states that the learned Single Judge failed to appreciate that the Appellants have been the victim of the inter-institutional discrimination i.e. between the students admitted under two sets of Medical streams in the matters relating to grant of license of practice i.e. students admitted under BAMS and BUMS governed by National Commission for Indian System of Medicines ('NCISM') falling under Ministry of AYUSH vis-a-vis MBBS students governed by NMC falling under Ministry of Health and Family welfare (all under the Union of India) notwithstanding that the degrees are equal in academic protocol; and that even the parliament has prescribed the same mode and manner and same test to entry (for admission) into these streams of education (vide National Eligibility Cum Entrance Test 'NEET'); and notwithstanding that their respective Acts i.e. NCISM Act 2020 and the National Medical Commission Act 2019, ('NCM Act 2019') has been at *pari materia* on all key aspects.

16.1. He states that the learned Single Judge failed to appreciate the similarity is more pronounced inasmuch as even the two sets of Regulations i.e., National Commission for Indian System of Medicine (National Examinations for Indian System of Medicine) Regulations, 2023 dated 20.12.2023 ('NCISM Regulations 2023') and The National Medical Commission National Exit Test Regulations (NExT) 2023 ('The NMC



NExT Regulations, 2023') dated 27th June, 2023 have been at pari materia on the issue i.e. the conducting of examination for providing license even after obtaining the final degree in the respective courses, yet the former has been applied retrospectively upon the Appellants and alike while the latter has been rightly applied prospectively.

16.2. He states that, thus, it ought to have been appreciated that the hostile selective discrimination is set in place inasmuch as the NMC has applied the NExT i.e. a provision for the grant of license through all India National Exit Test prospectively whereas the same has been applied to the students admitted under the Course of NCISM retrospectively giving rise to the discrimination between the students under the two streams.

16.3. He states that the case for the selective and hostile discrimination with the present set of students is all the more glaring in view of the fact that even the Pharmacy Council of India has applied such and similar NExT exam to the students of their stream with prospective effect.

16.4. He states that the Appellants are not challenging the vires of Section 15(1) or the NCISM Regulations, 2023. He states that Appellants are only challenging its applicability to the students who were enrolled in their respective courses prior to the said provision coming into force.

17. In reply, learned counsel for the Respondents states that one of the Appellants i.e., Appellant No. 2 in LPA No. 457/2024 was admitted to the course in the year 2014 and has for the last ten years been unable to clear his examinations for obtaining the degree itself. She states that other than the 40 students in the present appeal, there is no opposition raised by any undergraduate students to the NExT exam. She states that the NExT is a much-needed reform as it is intended to ensure a minimum standard of



competency across the country. She states that since medical graduates are from different universities and institutions, the Exit exam helps the regulator in assessing them by using the same benchmark.

Findings and Analysis

18. We have heard the learned counsel for the parties and perused the record.

19. The learned Single Judge while negating the submissions of the Appellants has returned the following key findings in the impugned judgment:

19.1. Firstly, Section 15(1) of the NCISM Act does not require the NExT to be cleared before grant of the BAMS/BUMS degree. The NExT is a licentiate examination, and not a qualifying examination before obtaining the BAMS/BUMS degree. No NExT has, therefore, to be undertaken for obtaining the BAMS/BUMS degree.

19.2. Secondly, there is no conflict between Section 15(1) of the NCISM Act and Regulation 6(2) of the NCISM Regulations, 2023 both of which envisage the NExT exam as being a licentiate examination, to be undertaken after the BAMS/BUMS degree is obtained, and for being granted a licence to practice Ayurvedic or Unani medicine as a registered medical practitioner.

19.3. Thirdly, there is no conflict between Section 15 and Section 47 of the NCISM Act. Section 47 is concerned with the award of the BAMS/BUMS degree and not with the grant of licence to practice as a registered Ayurvedic or Unani medical practitioner, whereas Section 15 is not concerned with the award of the BAMS/BUMS degree, but is concerned with the requirement of undertaking the NExT thereafter, for obtaining a licence to practice. The two provisions, therefore, operate in different fields, and the non obstante



clause in Section 47 does not in any way affect the applicability of Section 15(1).

19.4. Fourthly, the right to obtain a licence as a registered Ayurvedic or Unani medical practitioner vests only for a student who holds a BAMS/BUMS degree. Prior to obtaining the BAMS/BUMS degree, the student has no right to practice as a registered medical practitioner. On the date when Section 15(1) of the NCISM Act came into force, therefore, no right vested in any of the Appellants to be granted a licence to practice as a registered Ayurvedic or Unani medical practitioner. Indeed, the right of the Appellants, on the date when Section 15(1) of the NCISM was brought into force was only to be permitted to follow the course and syllabus presently being followed by them and be conferred the BAMS/BUMS degree on clearing all requisite papers. Section 15(1) does not, therefore, divest the Appellants of any right which had even accrued, much less vested, in their favour. As, on 11th June 2021, when Section 15(1) of the NCISM Act was brought into force, the Appellants were still in the process of pursuing their BAMS/BUMS courses, and had yet to obtain their BAMS/BUMS degrees, it cannot therefore be said that, by merely enrolling in the BAMS/BUMS courses, a right vested in the Appellants to be conferred licenses to practice as Ayurvedic or Unani medical practitioners immediately on obtaining the BAMS/BUMS degrees.

19.5. Fifthly, the introduction of the NExT is in keeping with the NEP 2020 and is obviously in public interest. It is intended to ensure quality and excellence in persons practising Ayurvedic and Unani medicine. It is taken on the basis of parliamentary legislation, which is in fact superior to any governmental order or Rule. It falls solely and squarely within the realm of



academic policy. While undertaking the BAMS or BUMS courses, the Appellants may have had a fond desire that they would clear the courses and ultimately be awarded BAMS or BUMS degrees. But this cannot translate into a legal right. The right to a license to practice as a registered medical practitioner is a later stage, conditional on obtaining a valid BAMS or BUMS degree. The introduction of the intervening NExT examination, by the NCISM Act and Section 15 thereof cannot, therefore, be invalidated on the principle of legitimate expectation.

19.6. Sixthly, none of the Appellants having, on 11th June 2021, yet obtained their BAMS or BUMS degrees, they cannot seek to plead that, by that date, any right had accrued in their favour, or that they were entitled to the privilege of being granted a licence to practise as registered medical practitioners.

19.7. Seventhly, none of the Appellants, however, had obtained the BAMS or BUMS degrees by 11th June 2021, when the requirement of clearing the NExT was introduced. No right to obtain a license to practice as registered medical Ayurvedic or Unani practitioners had therefore, vested in favour of the petitioners on the date when Section 15(1) of the NCISM Act was brought into force. It cannot, therefore, be said that the provision was made retrospectively applicable to the petitioners.

20. The Appellant has during the course of arguments not challenged the aforesaid findings of the learned Single Judge. The sole reliance placed was on the fact that Exit Exam for the MBBS students and Pharmacy students has been brought into effect from a future date and does not apply to the already enrolled students.

21. Regulation 6(2) (3) and (6) of the NCISM Regulations, 2023 sets out



the objective of the Test and reads as under:

“6. *National Exit Test:*

.....

(2) *The National Exit Test shall be held for granting license to practice as medical practitioner of respective discipline of Indian system of medicine and for enrollment in the State Register or National Register as a registered medical practitioner of Indian system of medicine after completing one-year internship.*

(3) *The examination shall be problem based to test the clinical competency, understanding of medical ethics and the ability to deal with medico-legal cases as a medical practitioner in the discipline Ayurveda, Unani, Siddha and Sowa-Rigpa, as the case may be.*

...

(6) *Without qualifying National Exit Test, any graduate of Bachelor of Ayurvedic Medicine and Surgery or Bachelor of Unani Medicine and Surgery or Bachelor of Siddha Medicine and Surgery or Bachelor of Sowa-Rigpa Medicine and Surgery, shall not be eligible for enrollment in the State Register or National Register, as the case may be.”*

The NExT is thus, intended to function as a licentiate exam to authenticate the competence of the medical graduates who aspire to practice.

22. Similarly, the NMC’s stated objective¹ for prescribing the NExT is to bring in uniformity in the summative evaluation across the country with reference to the minimum common standards of education and training of a medical graduate. The NMC NExT Regulations 2023 have since been notified on 27th June, 2023 and Regulation 3(2)(i) therein states that the purpose of NExT is to certify the eligibility of medical graduates to register and to practice the modern system of medicine in India.

23. The Supreme Court in *Aravinth v. Ministry of Health & Family Welfare*² while examining a challenge to the licentiate regulations issued by NMC for foreign medical graduates traced the history of the problem of lack of quality professionals which plagues the field of medicine. The Court held that these regulations merely prescribed the minimum standards to be

¹ Public notice dated 28th December, 2022 issued by NMC for seeking comments on the draft regulations related to National Exit Test (NExT)

² (2022) 14 SCC 280



fulfilled by those who study in those institutions and thereafter upheld the regulations. The relevant paras of the aforesaid judgment read as under:

*“10. But we do not think that any of the above grounds of challenge are sustainable in law. **The Regulations impugned by the appellant may appear superficially to be rigorous or tough. But these Regulations are a product of, (i) past experience; and (ii) necessity of times.** Experts in the field of education believe (and justifiably so) that over ambitious parents, hapless children, exploitative and unscrupulous (and sometimes unlettered) founders of infrastructure-deficient educational institutions, paralysed regulatory bodies and courts with misplaced sympathy, have all contributed (not necessarily in the same order) to the commercialisation of education and the decline of standards in the field of education, in general and medical education, in particular. We may be able to appreciate this, if we have a look at the history of evolution of statutory measures taken to regulate the recognition and registration of foreign medical degrees in India.*

11. The problem of unrecognised institutions offering diplomas/degrees in Medicine and untrained individuals practising Medicine, is not new, but is a century old phenomenon in India.

.....

57. Similarly, the requirement under Regulation 4(b) has been necessitated to ensure that the students who were imparted medical education in a foreign country demonstrate their skills first on the population of the country where they studied. The necessity for a Master Chef to taste the food prepared by him, before it is served on the guests, cannot be said to be arbitrary. Therefore, the challenge to the Licentiate Regulations, is wholly without basis.

58. The contention that Section 36(4) recognises MBBS courses of a duration of less than 54 months and that therefore the Licentiate Regulations being a subordinate legislation is ultra vires, is wholly unsustainable. All that sub-section (4) of Section 36 saves, are the qualifications already recognised before the date of commencement of the Act and included in the Second Schedule and Part II of the Third Schedule to the 1956 Act. The fact that past sins are sought to be washed away, is no ground to hold that there cannot be a course correction. As a matter of fact, Section 60 which deals with repeal and saving, also saves under clause (b) of sub-section (2), any right, privilege or obligation already acquired. This cannot be stated to be in conflict with what is prescribed for the students of the future. In any case, Section 36 deals only with recognition of the foreign medical courses and not registration as medical practitioner. Registration is covered by Section 33. Therefore, Section 36(4) cannot help the appellant.

59. The contention that the country needs more doctors and that by restricting the registration of foreign medical graduates, the fundamental right of the professionals under Article 19(1)(g) and the fundamental right



of the citizens under Article 21 are impaired, is to be stated only to be rejected. It is true that the country needs more doctors, but it needs really qualified doctors and not persons trained by institutions abroad, to test their skills only in their motherland.

(‘Emphasis Supplied’)

24. The Appellant does not challenge the vires of the NCISM Regulations, 2023 and is only aggrieved in its applications to the students who were already enrolled prior to the coming in force of the said Regulations. In our considered opinion, the Appellants challenge to the applicability of the said Regulations to the enrolled students has been rightly repelled by the learned Single Judge. The Appellants have been unable to show any infringement of their legal rights with the introduction and applicability of the NExT exam.

25. The salutary purpose of introducing licentiate exam for professionals in order to ensure higher standards of professionalism was deliberated upon and upheld by the Supreme Court for lawyers as well in the case of ***Bar Council of India v. Bonnie Foi Law College***³. The relevant paras read as under:

“28. We have given our thought to the matter and share the concerns of all those who appeared before us to see that the best come into the profession. Quality of lawyers is an important aspect and part of administration of justice and access to justice. Half-baked lawyers serve no purpose. It is this quality control, which has been the endeavour of all the efforts made over a period of time.

29. The object of Parliament enacting the said Act was to consolidate the law relating to legal practitioners. The prominent role of the Bar Council of India, the apex body, is apparent from the functions prescribed for the Bar Council of India under Section 7 of the said Act. Clause (h) of sub-section (1), provides for promotion of legal education and for laying down standards of such education in consultation with universities in India and State Bar Councils. Clause (m) is in the nature of a residuary clause, having the widest amplitude to do all other things necessary for discharging the aforesaid functions. These provisions do not entrust the Bar Council of India with direct control of legal education, as primarily legal education is within the province of the universities. Yet, the Bar

³ (2023) 7 SCC 756



Council of India, being the apex professional body of the advocates, is concerned with the standards of legal profession and the equipment of those who seek entry into that profession. [See O.N. Mohindroo v. Bar Council of Delhi, (1968) 2 SCR 709 : AIR 1968 SC 888; Bar Council of India v. Dayanand College of Law, (2007) 2 SCC 202.] Neither these provisions, nor the role of the universities to impart legal education, in any way, prohibit the Bar Council of India from conducting pre-enrolment examination, as the Council is directly concerned with the standard of persons who want to obtain a licence to practise law as a profession.

....
31. *It is under clause (d) of sub-section (3) of Section 24 of the said Act that the Bar Council of India sought to introduce the All India Bar Examination, which would be uniformly applicable irrespective of the recognised educational institutions from which a person would complete Law before he was enrolled at the Bar. It is this endeavour of the Bar Council of India, which came to be assailed in the judgment of this Court in V. Sudeer [V. Sudeer v. Bar Council of India, (1999) 3 SCC 176] and that challenge succeeded. We would have to look carefully at this judgment in V. Sudeer [V. Sudeer v. Bar Council of India, (1999) 3 SCC 176] as in the reference order to the Constitution Bench, the first two questions referred to us really emanate from this judgment i.e. the authority of the Bar Council of India to provide for pre-enrolment training in terms of the 1995 Rules and whether pre-enrolment examination can be prescribed by the Bar Council of India under the said Act. In terms of the 1995 Rules, the trainee advocates are entitled to appear in court for seeking adjournments and to make mentioning on instruction of their guides, after their provisional enrolment.*

(‘Emphasis Supplied’)

26. The NExT exam which is a licentiate exam intends to ensure that only competent and qualified individuals are allowed to enter the practice of medicine and it would only be in the public interest that Appellants as well write these exams so as to maintain the quality of medical graduates. The instance of Appellant No. 2 given by Respondent is relevant and underscores the significance of this Test.

27. The submission of the Appellants that they have been discriminated as against students who are pursuing MBBS or Diploma in Pharmacy is without any merit. The learned Single Judge has returned a detailed finding after examining the applicable legal provisions that Appellants herein had no



vested right to practice as of 11th June, 2021 and therefore, Respondent No. 1, Ministry of AYUSH and Respondent No. 2, NCISM was well within its jurisdiction to prescribe the NExT Exam being effective from 11th June, 2021. The statutory regime governing the Appellants is NCISM Act, 2020, whereas the statutory regime governing the MBBS students is NCM Act, 2019; and students enrolled for the Diploma in Pharmacy are governed by a separate statutory regime of Pharmacy Act, 1948. The regulators under each of the aforesaid statutes are admittedly autonomous and different. The decision of NCISM to enforce its regulations with immediate effect is a decision within its jurisdiction and its validity is not dependent on the decision of the regulators under a different and separate regime even though it is in the field of medicine.

LPA 458/2024

28. No separate arguments were addressed in LPA 458/2024. The said LPA arises out of W.P.(C) No. 2998/2024 and has been dismissed by the common impugned judgment.

29. We, accordingly, find no merit in both the appeals and the same are dismissed alongwith pending applications.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

MAY 30, 2024/hp/ms