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

\+ W.P. (C) 11819/2016

INDIAN ASSOCIATION OF CLINICAL CARDIOLOGISTS

..... Petitioner

Through: Mr. Kapil Sibal and Mr. Raju Ramachandaran, Sr. Advs. with Mr. Amit Kumar, Mr. Shaurya Sahay, Mr. Chetan Joshi, Mr. Avijit Mani Tripathi, Mr. Kumar Abhishek, Ms. Rekha Bakshi and Ms. Hamsini Shankar, Advs.

Versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Anil Dabas and Mr. Praveen Kumar, Adv. for R-1/UOI

Mr. Vikas Singh, Sr. Adv. with Mr. T. Singhdev, Ms. Amandeep Kaur, Ms. Puja Sarkar, Ms. Manpreet Kaur, Ms. Michelle Biakthansangi Das, Mr. Tarun Verma and Ms. Arunima Pal, Advs. for R-2/MCI

Mr. Saurabh Chauhan and Mr. Varun Jain, Advs. for R-3/IGNOU

Mr. Bimlesh K. Singh, Mr. Ashutosh Bhardwaj and Mr. Ankit Dwivedi, Advs. for R-4/UGC

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

% 17.09.2019

1. Espousing the cause of holders of the Postgraduate Diploma in Clinical Cardiology (PGDCC) qualification, awarded by the Indira Gandhi National Open University (IGNOU), this writ petition seeks, effectively, issuance of a mandamus to amend the Schedule to the Indian Medical Council Act, 1956 (hereinafter referred to as "the IMC Act"), by entering, therein, the PGDCC as a "recognised medical qualification".

Facts

2. The Indian Medical Degrees Act, 1916 (hereinafter referred to as "the Indian Medical Degrees Act"), which, preambularly, was "an Act to regulate the grant of titles implying qualification in western medical science and the assumption and use by unqualified persons of such title", received the assent of the Governor-General on 16th March, 1916. Section 3, thereof, reads as under:

> "**3. Right to confer degrees, etc.–**The right of conferring, granting or issuing in the States degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice western medical science, shall be exerciseable only by the authority specified in the Schedule and by such other authority as the State Government may, by notification in the Official Gazette and subject to such conditions and restrictions as it thinks fit to impose/authorise in this behalf."

3. The Indian Medical Degrees Act, the writ petition impresses, continues to remain on the statute book, unblemished, till date.

4. The erstwhile Medical Council of India (hereinafter referred to as "MCI") was reconstituted by the Indian Medical Council Act, 1956 (hereinafter referred to as "the IMC Act"), which was enacted on 30th December, 1956. The preamble to the said Act declared it to be "an Act to provide for the reconstitution of the Medical Council of India, and the maintenance of the Medical Register for India and for matters connected therewith".

5. By an amendment, brought into effect from 27th August, 1992, Section 10A(1) was inserted in the IMC Act, which reads thus:

> "**10A. Permission for establishment of new medical college, new course of study etc. –** (1) Notwithstanding anything contained in this Act or any other law for the time being in force, –
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> (a) no person shall establish a medical college; or
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> (b) no medical college shall –
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> (i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or
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> (ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.–For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.–For the purposes of this section "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training."

6. Section 11 of the IMC Act – which, in a way, constitutes the "core" provision, for the purposes of the present controversy – reads thus:

"**11. Recognition of medical qualification granted by Universities or medical institutions in India.–** (1) The medical qualifications granted by any University or medical Institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(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 recognised, 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 recognised medical qualification only when granted after a specified date."

7. The prayer of the petitioner, in the writ petition, set out in so many words, is that a direction be issued, to the Central Government,

to, by notification under Section 11(2) of the IMC Act, amend the First Schedule thereto, by including, in the qualifications enumerated therein, the PGDCC, awarded by the IGNOU.

8. The third statute, of relevance, in the present case, is the Indira Gandhi National Open University Act, 1985 (hereinafter referred to as "the IGNOU Act"). The writ petition draws attention to the following clauses of Section 5 (1) of the said Act, which delineates the powers of the IGNOU, which was established by the said Act, preambularly, "at the national level for the introduction and promotion of open university and distance education systems in the educational pattern of the country and for the co-ordination and determination of standards in such systems":

> "**5. Powers of the University.**–(1) The University shall have the following powers, namely :–
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> (i) to provide for instruction in such branches of knowledge, technology, vocations and professions as the University may determine from time to time and to make provision for research;
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> (ii) to plan and prescribe courses of study for degrees, diplomas, certificates or for any other purpose;
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> (iii) to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognition on persons who have pursued a course of study or conducted research in the manner laid down by the Statutes and Ordinances;
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(x) to establish, maintain or recognise Study Centres in the manner laid down by Statutes;

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(xiii) to recognise examinations of, or periods of study (whether in full or in part) at, other Universities, institutions or other places of higher learning as equivalent to examinations or periods of study in the University, and to withdraw such recognition at any time;

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(xxi) to recognise any institution of higher learning or studies for such purposes as the University may determine and to withdraw such recognition;

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(xxiii) to recognise persons working in other Universities, institutions or organisations as teachers of the University on such terms and conditions as may be laid down by the Ordinances."

9. The writ petition avers that the PGDCC course was commenced, in 2006, by the IGNOU, to develop a cadre of non-interventional cardiologists, and involved a "two-year fulltime rigourous training in top cardiac hospitals in the country". In order to be eligible to apply for the PGDCC course, a candidate was required to have an MBBS degree. The writ petition also provides a comparative chart of the various "clinical rotations", undergone by a PGDCC student, *vis-à-vis* a student pursuing a super-specialty DM course, in Cardiology, with the All India Institute of Medical Sciences.

10. This Court, however, does not deem it necessary to extract the said tabular statement, as, in the opinion of this Court, it is completely proscribed, in law, from evaluating or comparing courses of medical education, or arriving at any subjective satisfaction regarding the comparative merits, superiority or inferiority, of one course, *vis-à-vis* another.

11. Be it noted, however, that, significantly, it is averred, somewhat candidly, in para XVIII of the writ petition, that "the training in non-invasive procedures of cardiology of both group of trainees are *almost identical,* i.e. training provided to PGDCC students are *similar* to that provided that super speciality level of cardiology." Equally candidly, it is admitted, in the very same para of the writ petition, that "the only difference in training is that the petitioners do not receive training in surgical and invasive procedures of cardiology which are performed in Cath Labs and O.T.s". Presumably, attention is being invited to this distinction, to emphasise the fact that the members of the petitioner-Association do not seek to practise as interventional cardiologists, but only as non-interventional cardiologists.

12. The writ petition further avers that (i) PGDCC students are already trained MBBS doctors and no laymen to the science of treatment of patients, and (ii) the qualifications and competence of the members of the petitioner-Association are unimpeachable.

13. Considerable effort is expended, in the writ petition, in comparing the PGDCC qualification, conferred by the IGNOU, with the Diplomate of National Board (DNB) qualification, awarded by the National Board of Examinations (NBE). The petitioner emphasises that the NBE, though established in 1975, with an intention of providing a common standard mechanism of evaluation of minimum level of attainment of the objectives for which postgraduate courses were started in medical institutions, did not have any statutory backup, and was not conferred power, by any statute, to award medical or other degrees or diplomas. Even so, it is pointed out that the NBE awards the DNB qualification, at the Postgraduate and Postdoctoral levels, in about 54 disciplines, and holders of such qualification are regarded as specialists in their respective fields, in hospitals, as well as in training and teaching institutions. Emphasising the fact that the NBE was conducting the DNB courses, oftentimes, in the same hospitals where the IGNOU was conducting its PGDCC course, the writ petition complains that the DNB was a "recognised medical qualification", in the IMC Act, which courtesy was not being extended to the PGDCC qualification. The writ petition reasserts that the PGDCC course is "modeled on pattern similar to DNB (Cardiology) Course which is recognised by the respondents under the IMC Act, 1956 without any permission thereof under Section 10A of the said Act".

14. It is also contended, in the writ petition, that Section 10A of the IMC Act would not apply to the award of PGDCC qualification by the IGNOU, as what is proscribed by Section 10A is the establishment, of

a medical college, by any person, or the opening of a new or higher course of study or training, which would enable a student thereof to qualify himself for the award of any recognised medical qualification, by a medical college. The IGNOU, it is pointed out, is not a "medical college", neither had the IGNOU opened any medical college. Rather, the writ petition emphasises clauses (xiii), (xxi) and (xxiii) of Section 5(1) of the IGNOU Act which empowers the IGNOU to recognise courses of study and examinations conducted in other institutions, as those conducted by the IGNOU, and is not required to establish any medical college, to confer a degree in medical sciences. For this reason, too, it is sought to be submitted that Section 10A of the IMC Act does not apply to the PGDCC qualification awarded by the IGNOU.

15. It is further sought to be pointed out that PGDCC-holders have often been asked to manage Intensive Care Unit (ICU) in hospitals, and have been posted as medical Officers in-charge of ICUs, empowered to conduct non-invasive cardiac procedures. These professionals, it is averred, have completed their PGDCC course from renowned medical institutions and hospitals, and are associated with experts in the field, as attending consultants, associate consultants and consultants.

16. In this scenario, the writ petition complains that the non-notification, of the PGDCC qualification as one of the "recognised medical qualifications" enlisted in the First Schedule to the IMC Act, is arbitrary and unsustainable on facts and in law. As a result of such non-recognition, it is pointed out, holders of the PGDCC qualification

are unable to practise as specialists in the field of non-invasive cardiology, and no recognition is being granted to their PGDCC qualification, when they apply for regular Government jobs as specialists/non-invasive cardiologists. The "rigorous training", to which holders of the PGDCC qualification have been subjected, resultantly, it is pointed out, has come to naught. The writ petition further draws attention to the fact that PGDCC-holders have been registered by the Maldives Medical and Dental Council as cardiologists.

17. The repeated representations, by members of the petitioner-Association, to all functionaries, including the MCI, for inclusion of the PGDCC qualification as a "recognised medical qualification", in the First Schedule to the IMC Act, having met with no favourable response, the petitioner-Association has, by way of these writ proceedings, sought issuance of a writ of mandamus, to the respondents, to recognise the PGDCC qualification, awarded by the IGNOU, as a "recognised medical qualification", by including the said qualification in the First Schedule to the IMC Act.

Stand taken in counter-affidavits, and rejoinders, by the petitioner thereto

18. The IGNOU has filed an affidavit, in these proceedings, supporting, needless to say, the stand of the petitioner-Association.

19. In a starkly contrary vein, the MCI has, in its counter-affidavit, submitted, without a trace of equivocation, that the IGNOU had commenced the PGDCC course in blatant violation of the applicable rules and regulations and that, therefore, there could be no question of according any recognition to the said course. To bring this point home, the MCI has explained, in detail, the procedure to be followed, before any institution starts a new postgraduate medical course, thus:

> (i) Section 33 of the IMC Act empowers the MCI to, with the prior approval of the Central Government, frame regulations, prescribing minimum standards of infrastructure, teaching and other requirements for conduct of medical courses. The regulations so framed have been held, by the Supreme Court, in ***Medical Council of India v. State of Karnataka, (1998) 6 SCC 131***, to be mandatory and binding, and having pre-eminence over any State enactment, rule or regulation, in relation to the conduct of medical courses, to the extent any such rule or regulation is inconsistent with the IMC Act or the Regulations framed by the MCI. This principle of law, it is pointed out, stood reaffirmed by the judgment of the Constitution Bench in ***Dr. Preeti Srivastava v. State of Madhya Pradesh, (1999) 7 SCC 120***.
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> (ii) Section 10A of the IMC Act obligated every person, seeking to establish a medical college, or to start any higher course of study, to seek prior permission of the Central Government.

(iii) In exercise of the power conferred by Section 33 of the IMC Act, and to further the purpose of Section 10A thereof, the MCI, with the prior approval of the Central Government, notified the Establishment of Medical College Regulations, 1999 (hereinafter referred to as "the 1999 Regulations"), which were revised, thereafter, in 2010.

(iv) No private institution, which had not been granted permission/recognition, by the Central Government, to conduct an MBBS course, could be permitted to start higher courses of study. Permission, to an institution, to start an MBBS course, was circumscribed by the 1999 Regulations, which contemplated

(a) application, by the institution, to the Central Government,

(b) evaluation thereof, by the Central Government,

(c) forwarding of the application to the MCI for further evaluation, which would include inspections/assessments for verification of the infrastructure, teaching faculty, clinical material and other physical facilities available in the college,

(d) issuance of Letter of Permission, by the Central Government, on the recommendation of the MCI, for commencing admissions,

(e) annual renewal of the said permission, to be granted by the Central Government on the recommendation of the MCI and

(f) at the time of undertaking, by the first batch of students admitted to the MBBS course, of the final examination, grant of formal recognition by the Central Government to the institution, on the recommendation of the MCI.

(v) Apart from this, at the time of establishment of a new medical College, prior permission of the Central Government, as contemplated by Section 10A of the IMC Act, was mandatory, and permission, for such establishment, was granted in terms of Section 10A and the 1999 Regulations. Till such time as the MBBS course, to be started by the institution, was recognised under Section 11(2) of the IMC Act, such permission was renewed, on a year-to-year basis.

(vi) An institution, which did not subject itself to the rigour of the above procedure, for starting an MBBS course, could not be permitted to start higher courses of study.

(vii) Grant of permission for starting postgraduate courses, in a medical college or institution, was governed by the Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including Postgraduate Course of Study or Training) Regulations, 2009, the relevant Regulations, whereof, read as under:

“ **PART –I**

SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT FOR OPENING A NEW OR HIGHER COURSE OF STUDY OR TRAINING (INCLUDING A POSTGRADUATE COURSE OF STUDY OR TRAINING) IN A MEDICAL COLLEGE OR INSTITUTION.

1. INSTRUCTION TO THE MEDICAL COLLEGE/INSTITUTION

For starting higher courses in medical subjects in the medical colleges/institutions, the medical college/institution should be recognised medical college or institution. The medical college/institution should conform to the guidelines laid down in the Graduate Medical Education Regulations, 1997/Postgraduate Medical Education Regulations of the Medical Council of India as amended from time to time and approved by an Central Government. The medical college/institution may apply to the Central Government for the permission along with the permission of the State Government, affiliation granted by the University recognised under University Grants Commission Act or State or Central Act and in conformity with the Medical Council of India regulations along with the documentary evidence to show additional financial allocation, provision for additional space, and equipment and other infrastructural facilities and provision of recruitment of additional staff as per Medical Council of India norms.

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3. QUALIFYING CRITERIA:

The medical college/institution shall qualify for opening a New or Higher Course of Study or training (including a Post-Graduate Course of Study or Training) in the medical colleges/institutions if the following conditions are fulfilled:

> (1) The Medical college/institution must be recognised by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate Course; however, the Medical College/Institute which is not yet recognized by the Medical Council of India for the award of MBBS Degree may apply for starting of a Postgraduate Course in preclinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic medicine and Community Medicine at the time of third renewal – i.e. along with the admission of fourth batch for the MBBS Course;"

(viii) Regulation 6 of the Postgraduate Medical Regulations, 2000 (hereinafter referred to as "the 2000 Regulations"), which deals with "Starting of Postgraduate Medical Courses and their recognition", contains, *inter alia*, the following clauses:

> "1. An institution intending to start a Post Graduate medical education course or to increase the annual intake capacity in an already ongoing course shall obtain prior permission of the Central Government as provided under section 10A of the Act.
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> 2. The institution shall apply for recognition of the Post Graduate medical qualification to the Central Government through the affiliating University, when the first admitted batch shall be due to appear for the examination to be conducted by the affiliating university.
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> 3. Failure to seek timely recognition as required in sub-clause 2 shall invariably result in stoppage of admission to the concerned Post Graduate Course.
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> 4. The recognition so granted to a Post Graduate Course shall be for maximum period of 5 years, upon which it shall have to be renewed."

(ix) Regulation 8(1), of the 2000 Regulations, reads thus:

> "**8. GENERAL**
>
> (1) The institutions recognised by the Medical Council of India for running Postgraduate courses prior to the commencement of the Indian Medical Council (Amendment) Act, 1993 and those medical colleges recognised for running Bachelor of Medicine and Bachelor of Surgery (MBBS) course or institutions established by the Central Government for the purpose of imparting postgraduate medical education shall be eligible for starting any postgraduate degree or diploma and higher speciality course. However, the medical college/ institute which is not yet recognised by Medical Council of India for the award of MBBS degree may apply for starting of postgraduate course in pre clinical and para clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Forensic Medicine & Community Medicine at the time of third renewal – i.e. along with the admission of fourth batch for the MBBS course."

20. Attention is further invited, in the counter-affidavit filed by the MCI, to Section 10B(2) of the IMC Act, whereunder no medical qualification, granted to any student, of a medical college, which opens a new or higher course of study or training (including a postgraduate course of study or training), except with the prior permission of the Central Government in accordance with the

provisions of Section 10A of the IMC Act, shall be a recognised medical qualification for the purposes of the said Act.

21. Further, Section 10C of the IMC Act requires any person, who has established a medical college, or any medical college which has opened a new or higher course of study or training, after 1st June, 1992, to seek, within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1993, the permission of the Central Government, in accordance with Section 10A of the IMC Act.

22. Thus, contends the MCI, the medical institution is entitled to make admissions to higher courses of study, only after it has been granted permission therefor, in accordance with the aforesaid Regulations, and it is only thereafter, that the medical institution could apply, under Section 11(2) of the IMC Act, to the Central Government, for recognition of such higher qualification, which would be granted, by the Central Government, after consulting the MCI.

23. The IGNOU, it is contended by the MCI, not being a medical college established with the prior permission of the Central Government under Section 10A of the IMC Act, could not have sought permission for the commencement of any Postgraduate Medicine Course. That apart, it is pointed out, the IGNOU never sought the permission, of the Central Government, under Section 10A of the IMC Act, for starting a new medical course whatsoever, so that

there could be no question of grant of any recognition to the PGDCC qualification, awarded by it. By operation of Section 10B of the IMC Act, it is contended that the said PGDCC qualification was not a "recognised medical qualifications". No prior permission, of the Central Government, was taken before starting the said course. In any event, it is further pointed out, the IGNOU not being an institution which had been granted recognition for running an MBBS course, by the Central Government, there could be no question of recognising any postgraduate medical course, run by it, or of any qualification awarded consequent thereto.

24. It is contended, by the MCI, that the IGNOU is merely a "diploma awarding institution", qua the PGDCC qualification.

25. The counter-affidavit of the MCI also proceeds to advance submissions on the consequences of possessing an unrecognised qualification. However, it is not necessary to advert thereto, in order to adjudicate on the controversy in the present writ petition.

26. The stand of the MCI has been echoed, albeit much more briefly, by Respondent No. 1 (the Union of India).

27. The petitioner has, in its rejoinder to the counter-affidavit of the MCI, reiterated its stand, as ventilated in the writ petition, that the IGNOU, not being a medical college, Section 10A of the IMC Act did not apply to it, or to courses run by it or qualifications awarded consequent thereupon. *Ipso facto*, it is contended, the 2000

Regulations, which were framed under Section 33, read with Section 10A of the IMC Act, too, had no application, in respect of courses conducted by the IGNOU. Section 10A of the IMC Act not being applicable to the IGNOU, it is contended that Section 10B, of the same Act, would also not be applicable.

28. As such, it is contended that the failure, on the part of the MCI, to grant recognition, to the PGDCC qualification awarded by the IGNOU, under Section 11(2) of the IMC Act, could not be justified by reference to Section 10A thereof. It is emphatically contended, in this regard, that Section 11(2) of the IMC Act does not state, anywhere, that medical colleges, alone, could seek recognition of degree/diplomas awarded by them.

29. In any event, it is contended, the authority, competent to grant, or refuse, recognition, under Section 11(2) of the IMC Act, was not the MCI, but the Central Government. As such, it is sought to be pointed out that the MCI has no power or authority, to refuse recognition.

Additional Affidavit of MCI regarding DNB qualification

30. In view of the extensive reliance, placed by the petitioner on the fact that the Diplomate of National Board (DNB) qualification, awarded by the National Board of Examination (NBE) has been included in the First Schedule to the IMC Act, as a "recognised qualification", despite no application for recognition having been

submitted, by the NBE, under Section 10A of the IMC Act, the MCI has clarified, by way of an additional affidavit (filed pursuant to directions issued by this Court) that the qualification of DNB, awarded by the NBE, had been included in the First schedule to the IMC Act much prior to 27th August, 1992, when Section 10A was added to the said Act.

Written submissions

31. Written submissions have also been filed, by the petitioner as well as the respondents.

32. Apart from reiterating the contentions contained in the writ petition, and the rejoinder, filed by it, the petitioner has, in his written submissions, asserted that Section 11 of the IMC Act did not require the University, or medical institution, seeking recognition of a course conducted by it, to take prior permission of the Central Government, or of MCI, before starting the course. On the aspect of the requirement of prior permission, of the MCI, or the Central Government, before the petitioner decided to start the PGDCC course, it is contended that the said course was started, and continued, under the IGNOU Act, and the PGDCC qualification was awarded by the IGNOU in exercise of the power conferred by Section 5(1)(iii) of the said Act. The IGNOU Act, it is asserted, conferred absolute power, on the IGNOU, to start new courses, which would include medical courses. Even for this reason, it is contended, the MCI and Central Government could not refuse to

recognise the PGDCC course conducted by the IGNOU, or the qualification awarded consequent thereupon.

33. Reliance is also placed, by the petitioner, in this context, on Section 3 of the Indian Medical Degrees Act, which, according to the petitioner, entitles the IGNOU to award the PGDCC qualification, which was, even for that reason, a legally valid diploma, not requiring prior permission of the MCI, or the Central Government, under Section 10A of the IMC Act. Section 10A of the IMC Act, it is pointed out, does not debar the IGNOU from starting the PGDCC course, without prior permission.

34. The MCI has, in its written submission, placed reliance on the judgment of the Supreme Court in ***Thirumuruga Kirupananda Variyathavathiru Sundara Swamigal v. State of Tamil Nadu, (1996) 3 SCC 15***. This judgment, submits the MCI, clarifies that the entire field, relating to establishment of medical colleges as well as starting of medical courses, stands covered by Section 10A of the IMC Act. It is further contended that, in any event, the petitioner does not have any judicially enforceable right to have the PGDCC qualification included in the First Schedule to the IMC Act, as would entitle it to maintain a prayer for issuance of a writ of mandamus.

35. Reliance is further placed, by the MCI, on the following authorities:

(i) ***Dr. V. Balaji v. Union of India, (2009) 1 MLJ 1041***, the SLP, preferred thereagainst, stands dismissed by the Supreme Court, and

(ii) ***Dr M. Ramesh v. Union of India., (2012) 1 MLJ 18,*** which makes a specific reference to the PGDCC course conducted by the IGNOU.

Arguments in Court

36. Mr. Raju Ramachandran and Mr. Kapil Sibal, learned senior Counsel appeared on behalf of the petitioner, Mr. Anil Dabas argued on behalf of the Union of India, Mr. Vikas Singh, learned Senior Counsel appeared on behalf of the MCI, ably assisted by Mr. T. Singhdev, and Mr. Saurabh Chauhan appeared on behalf of the IGNOU.

37. Arguing for the petitioner, Mr. Ramachandran submitted, at the very outset, that, had the MCI refused to recognise the PGDCC qualification awarded by the IGNOU, after examining the issue on merits, he would have had no grievance. As it were, however, Mr. Ramachandran would seek to submit, the request, of his clients, for inclusion of the PGDCC qualification in the First schedule to the IMC Act was thrown out on the ground – which, according to him, was entirely without merit – that the IGNOU had not obtained prior permission of the Central Government, as required by Section 10A of the IMC Act, before commencing the PGDCC course. Mr. Ramachandran submitted that, unlike the case of a qualification given

by a medical college, which would be covered by Section 10A, grant of a decree or diploma, by a University or the medical institution, directly attracted Section 11 of the IMC Act, and Section 10A was entirely inapplicable to such a case. Section 11 of the IMC Act, Mr. Ramachandran points out, does not contemplate any prior permission of the Central Government, before a medical course was granted recognition.

38. Mr. Ramachandran, further, placed reliance on Section 3 of the Indian Medical Degrees Act, read with S. No. 1 of the Schedule thereto. He submitted that the right to confer, grant or issue degrees, diplomas and licenses, was conferred, by Section 3 of the Indian Medical Degrees Act, on the authorities enlisted in the Schedule thereto, the first of which was "every University established by the Central Act." The IGNOU being a University established by a Central Act, Mr. Ramachandran would seek to contend that the IGNOU was empowered to issue the PGDCC diploma, without requiring any prior approval of the Central Government or of the MCI, under Section 10A of the IMC Act. In this context, Mr. Ramachandran also relied upon Section 5(1)(iii) of the IGNOU Act, which reads thus:

> "**5. Powers of the University.**–(1) The University shall have the following powers, namely : –
>
> > (iii) to hold examinations and confer degrees, diplomas, certificates or other academic distinctions or recognitions on persons who have pursued a course of study or conducted research in the manner laid down by the Statutes and Ordinances;"

39. Mr. Ramachandran further pointed out that, in its letter, dated 22nd February, 2012, addressed to the IGNOU, the MCI had opined that, as the PGDCC program of the IGNOU was "not covered under the nomenclature of Postgraduate Courses of MCI", it could not be recognised by the MCI. This, Mr. Ramachandran would seek to submit, was a purely technical objection, and could not constitute a legitimate basis to deny, to the PGDCC qualification, awarded by the IGNOU in exercise of the powers statutorily conferred on it, recognition for the purposes of the IMC Act.

40. Mr. Ramachandran finally sought to contend that qualifications awarded by the NBE were recognised, under the IMC Act, without the institutions, awarding such qualifications, having to apply for prior approval under Section 10A thereof. No justification, for according any different treatment, to the IGNOU, and the PGDCC qualification awarded by it could, he would submit, legitimately exist.

41. Mr. Vikas Singh, learned Senior Counsel appearing on behalf of the MCI submitted that, prior to the insertion of Section 10A in the IMC Act, w.e.f. 27th August, 1992, no doubt, the only provision, governing grant of recognition to medical degrees and qualifications, was Section 11 thereof. After the insertion of Section 10A, however, he would submit that it was not permissible for any institution to conduct a new medical course, or programme, or seek recognition of the degree, or other qualification conferred at the conclusion thereof, without following the procedure outlined in Section 10A of the IMC Act, in the first instance. The PGDCC programme was commenced,

by the IGNOU, in 2006, after the insertion of Section 10A in the IMC Act; ergo, Mr. Singh would submit, the IGNOU was bound by the rigour of Section 10A, in case it desired to have the said qualification recognised by the MCI. In proceeding to commence the course, and award the PGDCC diploma without following the procedure outlined in Section 10A, Mr. Singh would submit that the IGNOU acted illegally, and, therefore, no exception could be taken, to the decision not to accord recognition, to the PGDCC qualification, under Section 11 thereof. Any application for recognition of a medical course, Mr. Singh would emphasise, had necessarily to be in accordance with the statutory scheme contained in the IMC Act.

42. Mr. Ramachandran submitted, in rejoinder, that Section 10A of the IMC Act did not, in terms, apply either to the IGNOU, or to the PGDCC qualification awarded by it, as the IGNOU was not a "medical college". As such, he would submit that the Central Government was required to take a decision, on the request, of the IGNOU, for recognition of the PGDCC qualification, awarded by it, directly under Section 11 of the IMC Act, without reference to Section 10A, or requiring compliance, by the IGNOU, therewith.

43. Adverting to Regulation 6 of the Postgraduate Medical Education Regulations, 2000, Mr. Ramachandran submits that the word "institution", therein, has to be read as "medical institution", which was defined, in Section 2(e) of the IMC Act, as "any institution, within or without India, which grants degrees, diplomas or licenses in medicine". Referring, thereafter, to Section 6(2) of the Postgraduate

Medical Education Regulations, 2000, Mr. Ramachandran submits that the said sub-Regulation, too, had no application, insofar as the IGNOU was concerned, as it was itself a University, and did not have, therefore, any affiliating University.

Analysis

44. Recognition of an educational qualification is a very serious matter and, where the qualification relates to a course of medical study, the jurisdiction of the court – especially a writ court – is doubly circumscribed. The submissions, in the writ petition, regarding the perceived merits of the PGDCC course, the rigourous training suffered by those who undertake the course and aspire to the qualification, and its comparative merits, *vis-à-vis* other postgraduate courses or courses leading to the award of super-specialty qualifications, are entirely irrelevant, insofar as adjudication of the controversy in issue is concerned. This Court is no arbiter of the quality of the PGDCC course, or of its merit, so far as recognition thereof, under the IMC Act, is concerned. Nor will this Court sit in appeal, or even in judicial review, over the subjective satisfaction of the authorities concerned – chiefly, the MCI and the Central Government – on the issue of whether the PGDCC qualification ought, or ought not, to be accorded recognition, under Section 11 of the IMC Act.

45. In ***Madhur Eshwar Rao Basude v. Medical Council of India, 2015 SCC OnLine Del 14229***, a Division Bench of this Court, considering the plea, of the petitioners in that case, for recognition of

medical qualifications awarded by certain Universities located outside India, concluded the opinion by noting that "an expert body on the subject (the MCI) has in their wisdom thought it not fit to provide recognition for post graduate degrees obtained by persons from foreign universities other than those stipulated in the Schedule" and that it saw no reason to differ with the said view.

46. Having said that, it is apparent, from the facts, that the request, of the IGNOU, for recognition to be accorded, under Section 11 of the IMC Act, to the PGDCC diploma conferred by it, has not been considered – far less rejected – on merits.

47. Acutely conscious of the limitation, on the scope of the power of judicial review, which would be exercised in such cases, Mr. Ramachandran, advisedly, submitted, at the very outset, that he was limiting his case to the issue of whether the grounds, on which the MCI, or the Central Government, had refused to consider, on merits, the eligibility, of the PGDCC qualification, awarded by the IGNOU, for recognition under Section 11 of the IMC Act, were justified, or not. According to Mr. Ramachandran, Section 10A of the IMC Act has no application, whatsoever, in the case of the PGDCC qualification awarded by the IGNOU, or its entitlement to recognition which, he would seek to submit, has to be examined solely on the anvil of Section 11 of the IMC Act. For this, his main contention was that Section 10A dealt with two exigencies, the first being that of establishment of a medical College by any person, and the second being opening of a new or higher course of study or training, including

a postgraduate course of study or training, by a medical college. He contends that the IGNOU was not a medical college, and even if it were to be regarded as a "person", was not seeking permission to establish a medical college. The PGDCC qualification, he points out, was directly awarded by the IGNOU, which was a University. No "medical college" entered in the picture; consequently, Section 10A of the IMC Act did not apply.

48. In sum and substance, therefore, the submission of Mr. Ramachandran was that the IGNOU is not a "medical college".

49. Etymologically viewed, the submission of Mr. Ramachandran is attractive. A scan of Sections 10A, 10B and 10C, of the IMC Act, *vis-à-vis* Section 11 thereof, does indicate that, while the first three provisions use the expression "person or medical college", Section 11 uses the word "University or medical institution". The expression "medical college" is not defined in the IMC Act, though "University" is defined, in Section 2(l), as "any University in India established by law and having a medical faculty" and "medical institution" is defined, in Section 2(e), as "any institution, within or without India, which grants degrees, diplomas or licenses in medicine". The IGNOU, undoubtedly, qualifies as a "University", as defined in Section 2(l).

50. The IGNOU Act, however, defines "College", in Section 2(d) of the said Act, as meaning "a College or other academic institution established or maintained by, or admitted to the privileges of the University". Any academic institution, established or maintained by

the IGNOU is, therefore, a "college", within the meaning of the IGNOU Act. Academic courses or programmes are undertaken, by the IGNOU, through various "Schools", established and administered by it, and the Statutes of the IGNOU – as also the cover page of the Programme Guide relating to the said PGDCC course, as issued by the IGNOU, which forms part of the record – reveal that the PGDCC qualification was being conducted in the "School of Health Sciences", forming part of the IGNOU by lecturers, readers and Professors, appointed in said School, for the said purpose. Though the PGDCC programme is in the nature of a distance education course, it is administered, as already noted, by the School of Health Sciences, and the role of the School of Health Sciences, in implementation of the said programme is set out, in para 4.1 of the Programme Guide of the PGDCC course, as issued by the IGNOU, thus:

> "The School of Health Sciences is responsible for the curriculum design, programme development as well as framing the guidelines for various aspects of the implementation process in consultation with the concerned divisions. Besides it will be monitoring the programme to ensure the quality training. The SRD is responsible for admission of students. The SED is responsible for maintenance of progress report and evaluation (both concurrent and end-assessment) including the certification. Regional Centre is responsible for dispatch of print materials. RSD (Regional Service Division) is the coordinating division between the head quarter and peripheral set up. So most of the information from Regional Director will go to headquarter only through RSD. Besides RSD appoints the counsellors, programme-in-charge and takes care of the financial aspects of running the programme.
>
> The sessions will be conducted through the counsellors identified at Programme Study Centre (PSC).

> The PSCs are the Cardiac Hospitals/Medical Colleges identified by IGNOU for this programme. At PSC, you will be demonstrated practical skills and give opportunity to clear the doubts."

51. As noted hereinabove, any, and every, academic institution established and maintained by, or admitted to the privileges of the IGNOU, is a "college", within the meaning of the expression as defined in Section 2(d) of the IGNOU Act.

52. "Institution", for its part, is a word of expansive scope, and in the context of education, the following passage, from ***Indian Medical Association v. Union of India, (2011) 7 SCC 179***, is instructive:

> "What does Article 38 mean, when it talks about "institutions informing our national life"? Clearly higher education, and more particularly professional educational institutions imparting education in the medical, technical and engineering, scientific, managerial and legal fields, are to be recognised as being vital to the national well being, and determine the character of life, and social order throughout the nation. Each and every particular educational institution is a part of a large-scale national endeavour to educate our youngsters. The word "institution" is capable of many meanings. It could be used in a narrow sense; however, it is also used, for instance, to refer to a broad class of fields of human and organisational endeavours: we talk about press and the media as an institution, we talk about legislative field as an institution, we talk about the executive as an institution, and indeed we talk about the judiciary, and the organisations engaged in the act of dispensing justice, collectively as an institution. We talk about universities, and seats of higher learning, collectively as an institution. At this level of generality, certainly the entire field of "higher education" is to be conceived as an institution informing our national life. The educated youngsters coming out of the portals of our each individual college enter into jobs that may require different degrees of discretionary judgment, which in turn may also affect the lives of other people, including those in socially and educationally disadvantaged

> groups. Consequently, we have to necessarily hold that Article 38 necessarily includes within its conception of "institutions informing our national life", all institutions that perform the role of imparting higher education."

53. Without needlessly exploring, any further, the peripheries of the concept of "Institution", this Court is of the view that the "School of Health Studies", in the IGNOU, which conducted the PGDCC course, on the completion whereof the PGDCC Diploma was awarded by the IGNOU, was, unquestionably, a "College", within the meaning of the expression as defined in Section 2(d) of the IGNOU Act, being an academic institution established or maintained by the IGNOU. Notably, P. Ramanatha Aiyar, in his "Advanced Law Lexicon" defines "college" thus:

> "In ordinary usage, a College is an institution of learning, which offers instruction in the liberal arts and in scientific branches. The word is applied to institutions which are confined to some special grades of instruction."

54. *Per sequitur*, the IGNOU was conducting the PGDCC course, in the opinion of this Court, through a "medical college", established and administered by it.

55. Such a construction, of the expression "medical college", as employed in Section 10A of the IMC Act, would also seem to be necessitated, if one were to read the said provision in juxtaposition with Section 11. Where section 10A refers to opening of a new, or higher course of study, by a medical college, as would enable a student to qualify himself for the award of the recognised medical

qualification, recognition of medical qualifications is governed by Section 11, which, in turn, refers to grant of medical qualifications by "any University or a medical institution in India". If, therefore, one were to exclude all cases, in which a new, or higher course of cardiology, is conducted by a University, as opposed to a medical college affiliated to a University, it would imply that, in cases in which the course of study is conducted by the University itself, Section 11 would apply, as the medical qualification is granted by the University, but the University would stand excluded from Section 10 A, as it refers to opening of a new, or higher course of study, by a "medical college". Such an interpretation would, in my opinion, result in an absurdity and, *reductio ad absurdum*, has necessarily to be avoided.

56. The submission of the petitioner that, as the IGNOU is not a "medical college", *stricto sensu*, it stands excluded from the applicability of Section 10A of the IMC Act is, therefore, rejected.

57. It now becomes necessary to juxtapose Sections 10A(1)(b)(i), and Section 11, of the IMC Act.

58. Section 10A(1)(b)(i) of the IMC Act deals with permission to open a new, or higher, course of study or training, including a postgraduate course of study or training. It mandates that no medical college shall open a new, or higher course of study or training, including a postgraduate course of study or training, *which would enable the students, pursuing such course or training, to qualify*

himself for the award ***of any recognised medical qualification***. Plainly read, Section 10A(1)(b)(i) would apply only where the new or higher course of study or training, which the medical college is intending to open, results in award of a "recognised medical qualification". This would imply that, in order for this provision to apply, the medical qualification, which would result by pursuing the course of study in question, has to be "recognised", as on the date when the course of study is to open, i.e., is to start or commence.

59. "Recognised medical qualification" is defined, in Section 2(h) of the IMC Act, as meaning "any of the medical qualifications included in the Schedules". To the same effect is sub-section (1) of Section 11. Sub- section (2) of Section 11, however, contemplates a situation in which the medical qualification, which the University or medical institution grants, is not recognised. The said sub-section permits the University, or medical institution, granting such a recognised medical qualification, to apply to have the qualification recognised, whereupon the Central Government may recognise the said qualification, in the manner specified.

60. Let us apply, now, Section 10A(1)(b)(i), and Section 11, as literally interpreted, to the case of the PGDCC course, of the IGNOU, with which the present writ petition is concerned. The IGNOU commenced to the PGDCC course in 2006. At that time, the PGDCC qualification was not a "recognised medical qualification" – indeed, it continues to be unrecognised till date. Section 10A(1)(b)(i) of the IMC Act applies, literally, only where the new, or higher course of study,

results in the awarding of a "recognised medical qualification". In such cases, the medical college is, prior to opening the new or higher course of study, required to obtain the permission of the Central Government. *A fortiori*, where the medical qualification is not a "recognised medical qualification" – such as the PGDCC – it would seem to appear that Section 10A(1)(b)(i) does not apply at all.

61. In view thereof, the IGNOU was not required, at the time of commencing the PGDCC course, to obtain the previous permission of the Central Government, under Section 10A of the IMC Act.

62. Viewed thus, the manner in which the IGNOU commenced the PGDCC course, and, later, applied for recognition of the PGDCC qualification is, in my view, clearly in accordance with the statutory scheme contained in the IMC Act. At the time of commencement of the course, the PGDCC qualification was not a "recognised medical qualification", as it did not figure in any of the Schedules to the IMC Act. There was no requirement, therefore, for the IGNOU to obtain prior permission of the Central Government, before starting the said course, under Section 10A(1)(b)(i). Having started the course, the IGNOU applied, under Section 11(2), for recognition of the PGDCC qualification, being granted by it. In my view, the Central Government was duty bound to consider the said application in accordance with Section 11(2) of the IMC Act. The rejection, of the application, on the ground that the PGDCC course had been commenced, by the IGNOU, without obtaining prior permission of the Central Government under Section 10A of the IMC Act is, in my view, totally misconceived, and

contrary to the scheme of Section 10A(1)(b)(i), read with Section 11(2), thereof.

63. The objection, of the MCI, to the IGNOU having commenced the PGDCC course, without obtaining the previous permission of the Central Government is, accordingly, rejected as, if this stand is accepted, the words "which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification", figuring in Section 10A(1)(b)(i), would stand reduced to a redundancy. It is trite, however, that the legislature is presumed not to indulge in surplusage and, as expressed in ***Union of India. v. Brigadier P. S. Gill, (2012) 4 SCC 463***, "one of the salutary rules of interpretation is that the legislature does not waste words". The words "which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification" have, therefore, to be accorded meaning, purpose and, most importantly, effect. At the cost of repetition, I may clarify that, in my view, according of effect to these words would necessarily entail limiting the applicability, of Section 10A(1)(b)(i) of the IMC Act, to the cases in which a new, or higher course of study, results in the award of the recognised medical qualification. In such cases, the medical college concerned would be prohibited from opening – i.e., from starting or commencing – the new or higher course of study, without obtaining the previous permission of the Central Government. Where, however, the qualification, which would result from pursuing of a new, or higher course of study, is not "recognised", on that date, the medical college would be perfectly within its rights in commencing the course

of study without obtaining *a priori* permission of the Central Government.

64. This is, undoubtedly, a very peculiar statutory dispensation, as it would imply that a medical college, which starts a new, or higher course of study, resulting in the award of an unrecognised medical qualification, does not have to obtain prior permission of the Central Government, before starting the course, whereas a medical college, which starts a new, or higher course of study, which results in the award of a recognised medical qualification, has necessarily to obtain such prior permission. That, however, is the only interpretation to which, in my view, Section 10A(1)(b)(i) lends itself, and it is not permissible for me, by judicial fiat, to strain the sinews of the statute, by attempting any other interpretation.

65. I do not find, from the decisions cited by either of the parties, or from any other judgment available in the public domain, which has come to my notice, that the actual impact of the words "which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification", in a case such as the present, has been examined and analysed. The issue, therefore, appears to be *res integra*.

66. I am unable, therefore, to subscribe to the stand, of the MCI, that, as the PGDCC course had been commenced, by the IGNOU, without obtaining prior permission of the Central Government under Section 10A of the IMC Act, it could not be granted recognition,

under Section 11. There was no requirement, for the IGNOU, at the time of commencement of the course, to obtain prior permission of the Central Government under Section 10A, as such prior permission was required only where a new or higher course of study or training/postgraduate course of study or training, which the medical college desired to start and which enabled the student, thereof, to qualify himself for the award of any recognised medical qualification. As, at the time of commencing of the PGDCC course by the IGNOU, the PGDCC qualification was not a "recognised medical qualification", Section 10A(1)(b)(i) was not applicable.

67. In para 15 of its counter-affidavit, the MCI has asserted that, under Section 10A of the IMC Act, "every person is obliged to seek prior permission from the Central Govt. for establishing a new medical college *or starting a new higher course of study* or for increase in its annual intake capacity". The statement of the law is correct, insofar as the establishment of a medical college, and increase of the admission capacity of the medical college in any course of study or training, is concerned, as Section 10A(1)(a) clearly states that no person shall establish a medical college, and Section 10A(1)(b)(ii) states that no medical college shall increase its admission capacity, in any course of study or training, except with the previous permission of the Central Government. However, the statement is not correct, insofar as it refers to starting of a new or higher course of study, as Section 10A(1)(b)(i) requires previous permission of the Central Government, in the case of opening of a new or higher course of study or training, including a postgraduate course of study or training, *only where such*

course or training enables the student to obtain a recognised medical qualification. If, therefore, the qualification that would be awarded, as a result of the new, or higher, course of study or training, is not a recognised medical qualification, there is no requirement for the medical college to obtain previous permission of the Central Government.

68. The reference, in the counter-affidavit of the MCI, on the Establishment of Medical College Regulations, 1999, is of no relevance, as the IGNOU was established much prior to 1999. In any event, it is nobody's case that the IGNOU was established in violation of the statute. At the time of its establishment, the IGNOU was not a "medical college" and, consequently, the rigours of the statutory provisions, applicable to establishment of medical colleges, even where such provisions existing at that point of time, could not affect the IGNOU. For the same reason, the averment, in para 20 of the counter-affidavit of the MCI, to the effect that "an applicant can establish a new medical College only after obtaining prior permission from the Central Government under Section 10A of the IMC Act, 1956", is correct, but is of no particular relevance, to the issue in controversy in the present case.

69. For the same reason, the reliance, by the MCI, on "The Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000", is of no particular

help to the respondents. Rather peculiarly, the Scheme for Permission of the Central Government, conceptualised in Part-I of the said Regulations, ordains that, for starting higher courses in medical subjects in medical colleges/institutions, the medical college/institution "*should be a recognised medical college or institution*". This stipulation appears, to me, to be completely foreign to the scheme of the IMC Act. The concept of "recognition" finds reference on as many as 46 occasions, in the various statutory provisions in the IMC Act, and, on each and every occasion, the recognition is of a qualification, and not of an institution. The IMC act does not contemplate, at any point, recognition of an institution. As such, while Regulation 3 of the 2000 Regulations requires the medical college/institution, which desires to open a new or higher course of study or training, to be recognised by the MCI for running the undergraduate course, *there is no provision, in the IMC Act, which refers to recognition of any such college or institution*. No challenge, to the 2000 Regulations, however, has been ventilated; accordingly, I am not required to opine any further on this aspect. Suffice it to state that, in any event, the MCI, and the Union of India, cannot seek to piggyback on the 2000 Regulations, to support the respective, though converging, stands canvassed by them.

70. The MCI has also placed reliance on the Postgraduate Medical Education Regulation, 2000. Specific attention has been invited, in the counter-affidavit of the MCI, to Regulation 6(1) of the said Regulations, which states that "an institution intending to start a Postgraduate Medical Education course or to increase the admission

capacity shall obtain prior permission of the Central Government under section 10A of the Act." This dispensation, quite obviously, has to be read in harmony with Section 10A(1)(b)(i) of the IMC Act and would, therefore, only apply where the postgraduate medical education course, which the institution intends to start, would equip the student, at the conclusion of the course, with a recognised medical qualification. It cannot, therefore, apply to a situation such as the present, in which the PGDCC, awarded by the IGNOU, has never been recognised, in the First Schedule to the IMC Act, as contemplated by Section 11(1) thereof.

71. Reliance has also been placed, by the MCI, on Section 10B (2) of the IMC Act, which reads thus:

> "**10B. Non-recognition of medical qualifications in certain cases. –**
>
> (2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be recognised medical qualification for the purposes of this Act."

In my view, Section 10B (2) does not state anything, which is not to be found in Section 10A(1)(b)(i), of the IMC Act. Section 10A(1)(b)(i) requires any medical college, opening a higher course of study, enabling the student, thereof, to qualify himself for award of

any recognised medical qualification, to obtain previous permission of the Central Government, before commencing the said course. Section 10B(2) vocalises the same concept in another manner, by declaring that, where a higher course of study is commenced, by a medical college without previous permission of the Central Government, the qualification awarded to the student, who pursues the said course, would not be a recognised medical qualification. To that extent, Section 10B (2) almost appears to be a provision enacted *ex abundanti cautela*.

72. As a result, in my view, the stance adopted by the MCI, and the Union of India, in the present case, stands defeated by the words "which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification", as contained in Section 10A(1)(b)(i) of the IMC Act. The *sequitur*, to this statutory dispensation, would be that if, at the time of commencement of the new, or higher course of study, by the medical college concerned, the resulting qualification is not a "recognised medical qualification" within the meaning of the IMC Act, Section 10A(1)(b)(i) would be inapplicable; consequently, there would be no requirement, for the medical college, to obtain previous permission of the Central Government before opening the higher course of study.

73. The PGDCC qualification, awarded by the IGNOU, does not figure in the First Schedule to the IMC Act and is not, therefore, a "recognised medical qualifications", under the said Act, as "recognised medical qualification" is defined, in Section 2(h) of the

IMC Act, as meaning "any of the medical qualifications included in the Schedules", and, admittedly, the PGDCC qualification does not find place in any of the Schedules to the IMC Act. It cannot, therefore, be said that the IGNOU was required, before opening the said course of study, to obtain previous permission of the Central Government, under Section 10A of the IMC Act.

74. The judgment in ***Thirumuruga Kirupananda Variyathavathiru Sundara Swamigal (supra)***, on which the MCI places reliance, merely reiterates the provisions of Section 10A of the IMC Act, the mandatory nature of which can never be in dispute. The said decision does not declare that, even when the qualification, which would ultimately be awarded on conclusion of the "new or higher course of study", which the medical college intends to commence, is not a "recognised medical qualification" under the IMC Act, the medical college has, nevertheless, to obtain previous permission of the Central Government before commencing the course.

75. Having thus attempted to harmonise Section 10A(1)(b)(i), Section 10B and Section 11(2) of the IMC Act, the following immortal passage, from Joseph Heller's classic '*Catch-22*', immediately comes to mind:

> "There was only one catch and that was Catch-22, which specified that a concern for one's safety in the face of dangers that were real and immediate was the process of a rational mind. Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn't, but if he was sane he had to fly them. If he flew them he was crazy and didn't have

> to, but if he didn't want to he was sane and had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle."

76. Equally "simple", I may observe, is the position that emerges, when one places Section 10A and Section 11, of the IMC Act, side-by-side. Seen together, the position that emerges – as sought to be worked out hereinabove – is redolent of Catch-22, in statutory shape.

77. Howsoever peculiar the legal position that results as a consequence of interpretation of statutory provisions, may be, so long as it stops short of absurdity, the Court, as a faithful interpreter thereof, is required to accord due respect to the statutory dispensation. The Court has, classically, to doff its hat to the will of the legislature.

78. Before parting with this judgment, I may advert to some of the other contentions advanced by the MCI, thus:

> (i) The submission, of the MCI, that no right, enforceable at law, to recognition of any qualification, under the IMC Act, exists is, empirically stated, unexceptionable, to the extent that the ultimate decision as to whether any particular qualification ought, or ought not, to be accorded recognition, under Section 11 of the IMC Act, is of the Central Government, to be exercised in consultation with the MCI, and any attempt, by the court, to interfere with the exercise of such discretion, may amount to judicial overreach. At the same time, it is a principle, fossilised in law over the years, that exercise of discretion has

necessarily to be judicious, failing which such exercise would be arbitrary, and would, accordingly, violate Article 14 of the Constitution of India. If, therefore, for reasons which appear to be legally unsound, the MCI, or the Central Government, refuses to consider the application, of any medical institution, for recognition of the qualification awarded by it, under Section 11 of the IMC Act, it would be the bounden duty of a writ court to step in, and remedy the situation. Every citizen has, unquestionably, an enforceable right, to have his application considered, by the competent statutory authority, in accordance with law. Mr. Ramachandran has, as already noted hereinabove, pressed his suit, before this Court, only to this limited extent.

(ii) The reliance, by the MCI, on Section 10C of the IMC Act, is also unsound, as the said provision applies only to new courses of study, commenced between 1st June, 1992 and the commencement of the IMC (Amendment) Act, 1993. Besides, the said provision requires compliance with Section 10A – which, as already held by me hereinabove, would not apply in the present case as, at the time of opening, by the IGNOU, of the PGDCC course, the qualification, resulting from the completion of the said course, was not a "recognised medical qualification", as defined in Section 11(1) of the IMC Act.

79. Equally, the reliance, by Mr. Ramachandran, on the Indian Medical Degrees Act, 1916, cannot be said to be particularly apt. The issue in controversy, in this case, is not the right of the IGNOU, to

award the PGDCC qualification, but the entitlement of the IGNOU, to insist on the said qualification being recognised under Section 11 of the IMC Act. Irrespective of the right, of any institution, to conduct a course, or award qualifications, such as degrees or diplomas, at the conclusion thereof, if such degree, or diploma, is a "medical qualification", recognition thereof has necessarily to abide by the provisions of the IMC Act, particularly Section 11 thereof.

Conclusion

80. Resultantly, the decision of the respondents, not to consider the application, of the IGNOU, for recognition of the PGDCC qualification, awarded by it, on the ground that, before commencing the PGDCC course, the IGNOU had not obtained prior permission of the Central Government, under Section 10A of the IMC Act, therefore, cannot sustain statutory scrutiny and is, accordingly, quashed.

81. The respondents, i.e. the Central Government and the IGNOU – are directed to consider, afresh, the application, of the IGNOU, for grant of recognition to the PGDCC qualification, awarded by it, under Section 11(2) of the IMC Act. This Court has not expressed any opinion on the merits of the said application, or on whether the PGDCC qualification deserves, or does not deserve, to be recognised under Section 11(2). That decision would have to be taken by the Central Government, after consulting the MCI, on its own merits. Needless to say, the pre-eminent consideration, while examining the

application of the IGNOU, would have to be fostering of excellence in medical education, aimed at bringing, into the world, medical professionals, were able to render the optimum service to the public, in the best interests of society.

82. The writ petition, accordingly, stands partly allowed, to the extent stated in paras 80 and 81 *supra*, with no orders as to costs.

C. HARI SHANKAR, J

SEPTEMBER 17, 2019
HJ