



July 11, 2018

Legal Opinion

Querist: Singhania University Students and Staff Welfare Association Trust

My opinion has been sought on the query that whether the medical students of Singhania University Pachari Bari (Jhunjhunu) ("**Singhania University**") will be eligible/ entitled to appear in the Exit/ Licentiate Exam when held after coming into force of the National Medical Commission Act ("**NMC Act**").

The answer to the aforesaid query lies by examining which students will be eligible under the NMC Act to appear for the National Licentiate Examination and for that it is pertinent to refer to Section 15 of the NMC Act which provides as under:

"National Licentiate Examination

*15. (1) The Commission shall conduct a uniform National Licentiate Examination for students graduating from the medical institutions which are governed by the provisions of this Act for granting licence to practice medicine as medical practitioners and for enrolment in the State Register or the National Register, as the case may be.
....."*

From the above it follows that the National Licentiate Examination shall be conducted by the National Medical Commission for all the students graduating from the medical institutions governed by the provisions of the NMC Act and the successful students shall be granted licence to practice medicine as medical practitioners and for enrolment in the State Register or the National Register, as the case may be.

Thus, in order to determine that whether the students of Singhania University will be entitled under law to appear in the National Licentiate Examination, it must be examined that whether Singhania University falls under the definition of "medical institutions which are governed under the NMC Act". The term "medical institution" is defined under Section 2(i) and

the term "University" is defined under Section 2(x) of the NMC Act as under:

"Section 2

In this Act, unless the context otherwise requires-

- (i) *"medical institution" means any institution, within or outside India, which grants degrees, diplomas or licenses in medicine;*
- (ii) (x) *"University" shall have the same meaning as assigned to it in clause (f) of Section 2 of the University Grants Commission Act, 1956 and includes a health University."*

It is further pertinent to examine the provisions of the University Grants Commission Act, 1956 ("**UGC Act**") which provides as under:

"2. Definitions

In this Act, unless the context otherwise requires, -

- (f) *"University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this Act.*

22. Right to confer degrees

- (1) *The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees."*

As per Section 22 of the UGC Act, a university established or incorporated by or under a State Act is empowered to award all degrees of education which includes degrees in medicine. Therefore, Singhanian University being established by a State Act namely, Singhanian University Pachari Bari (Jhunjhunu) Act, 2008 ("**Singhanian University Act**") is recognised under Section 2(f) of the UGC Act and empowered to grant or confer degrees in all courses of education including medicine. It is further pertinent to state that Singhanian University being a statutory body is governed by the provisions of the Singhanian University Act which provides for its powers and functions. Section 5 of the Singhanian University Act provides as under:

“5. Powers and functions of the University

The University shall have the following powers and functions, namely:

....

- (b) *to grant, subject to such conditions as the University may determine, diplomas or certificate, and confer degrees or other academic distinctions on the basis of examinations, evaluation or any other method of testing on persons, and to withdraw any such diplomas, certificate, degrees or other academic distinctions for good and sufficient cause;”*

Thus, as per Section 22 of the UGC Act read with Section 5 of the Singhanian University Act, Singhanian University is empowered under law to confer degrees, diplomas, certificates and all other academic distinctions in all courses of education including medicine as it may determine.

Coming back to the requirement under the NMC Act qua the eligibility/ entitlement of students for taking the National Licentiate Examination, as provided under Section 15 of the NMC Act, the students graduating from medical institutions which are governed by the provisions of the NMC Act shall be eligible/ entitled to take the uniform National Licentiate Examination. As discussed above, Singhanian University being empowered to grant degrees, diplomas and licenses in medicine thus, qualifies under the definition of “medical institution” as per Section 2(i) of the NMC Act.

Singhanian University is a medical institution governed by the provisions of the NMC Act is well established from the following provisions in the NMC Act:

“Recognition of Medical Qualifications

- 34.(1) *The medical qualification granted by any University or medical institution in India shall be listed and maintained by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in such manner as may be specified by regulations and such medical qualification shall be a recognised medical qualification for the purposes of this Act.*
- (2) *Any University or medical institution in India which grants an undergraduate or postgraduate or super-speciality medical qualification not included in the list maintained by the Under-*

Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, may apply to that Board for granting recognition to such qualification.

Recognition of medical qualifications granted by statutory or other body in India

36.(1) The medical qualifications granted by any statutory or other body in India which are covered by the categories listed in the Schedule shall be recognised medical qualifications for the purposes of this Act.

...

(3) The Central Government may, on the recommendation of the Commission, and having regard to the objects of this Act, by notification, add to, or, as the case may be, omit from, the Schedule any categories of medical qualifications granted by a statutory or other body in India and on such addition, or as the case may be, omission, the medical qualifications granted by such statutory or other body in India shall be, or shall cease to be, recognised medical qualifications for the purposes of this Act.

Completion of courses of studies in medical institutions

48.(1) Notwithstanding anything contained in this Act, any student who was studying for a degree, diploma or certificate in any medical institution immediately before the commencement of this Act shall continue to so study and complete his course for such degree, diploma or certificate, and such institution shall continue to provide instructions and examination for such student in accordance with the syllabus and studies as existed before such commencement, and such student shall be deemed to have completed his course of study under this Act and shall be awarded degree, diploma or certificate under this Act."

Section 34 specifically provides that the medical qualification granted by a University shall be listed and maintained by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be. Further, Section 48 being a non-obstinate clause i.e. prevailing over all other clauses expressly provides that any student who was studying for a degree, diploma or certificate in any medical institution

before the commencement of the NMC Act shall continue to study and complete his course and such institution shall continue to provide instructions and examination and such student shall be awarded degree, diploma or certificate under the NMC Act. Thus, the position in law as per the provisions of the NMC Act is very clear that after the commencement of the NMC Act, the students who have taken admission in medical courses before the commencement of the NMC Act shall continue and complete their studies and shall be entitled to be awarded the degree, diploma or other qualification under the NMC Act.

It is equally important to note that Singhania University is established by an Act of State Legislature that is a statutory body and being recognized under Section 2(f) of the UGC Act, it is entitled by authority of law i.e. Section 22 of the UGC Act read with Section 5 of the Singhania University Act to award degrees, diplomas and licenses in all courses of education including medicine i.e. MBBS, MD, MS, B.Sc. (Community Health), ANM, GNM, B.Sc. (Nursing), Paramedical courses viz. DMLT, BMLT, MMLT, DRIT, BRIT, MRIT etc. there being no requirement of taking any approval from any other authority or council.

The Ministry of Education, Government of India vide Circular No.F.18-27/70-T.2 dated 20.11.1970 has categorically notified that the degrees/ diplomas awarded by universities in India incorporated by an Act of the Central or State Legislature in India stand automatically recognised by the Government of India for purposes of employment under the Central Government. No formal order recognising such degrees/ diplomas are required to be issued by the Government. Even the Higher Education Department, Government of Rajasthan vide Circular dated 03.11.1999 following the circular of the Central Government has notified that the qualifications awarded by the universities established under the Central or the State Act shall automatically stand recognised for the purposes of State Government jobs and there is no requirement for issuing any separate orders in respect of the same.

Thus, the degrees, diplomas, certificates or any other educational qualifications awarded by Singhania University i.e. a statutory body established by a State Act are sui-generis valid for all intents & purposes. The passed-out students holding qualifications of Singhania University are

automatically entitled and recognised for Government jobs and registration with all the councils.

In case any public officer or authority acts otherwise and illegally deprives the students of their legal rights and the Fundamental Rights guaranteed under the Constitution of India, the said public officer or the authority shall be disobeying law and shall be committing offence personally liable to be punished under Section 166 of the Indian Penal Code, 1860 which shall include simple imprisonment for a term which may extend to one year, or with fine, or with both.

The aforesaid position in law is well settled as laid down by a catena of judgments. Some of the relevant judgments are discussed as under:

1. **Sunil Bishnoi v. State of Rajasthan & Singhania University, S.B.C.W.P. No.8149/ 2015, High Court of Rajasthan (Jodhpur)**

Facts of the case:

1. The Petitioners (students) took admission in the General Nursing and Midwifery ('GNM') and Auxiliary Nursing and Midwifery ('ANM') courses in Singhania University (Respondent No.3).
2. The Petitioners successfully completed their respective courses in the year 2014. After completing the courses, the Petitioners underwent requisite training of six months in different hospitals, obtained certificates and approached Rajasthan Nursing Council (RNC/ Respondent No.2) for registration under the Rajasthan Nurses, Midwives, Health Visitors and Auxiliary Nurse-Midwives Registration Act, 1964.
3. The Respondent No.2 i.e. RNC refused to register the Petitioners. As a result, the Petitioners approached the Court to direct the RNC to register their qualification.

Decision of the Court:

"It is not in dispute that the Respondent No.3-University, from which the petitioners have passed the GNM and ANM courses, is a University established under a statute. Hon'ble Supreme Court in Dr. B.L. Asawa v. State of Rajasthan & Ors. reported in AIR 1982 SC 933

has held that degree or diploma granted by a University, created by law or under the law, is not required to get recognition by other authority. The same view was taken by this Court in the decision dated 21.02.1991 rendered in Mrs. Madhu Santosh v. State of Rajasthan (S.B. Civil Writ Petition No.2502/1989) while relying on Dr. B.L. Asawa's case (supra). The Punjab and Haryana High Court in Ms. Neelam Devi's case (supra), on the same point has held as under:

IV. Degree conferred by University established under an enactment in sui generis and self-validating

5. It may be that the State of Haryana did not recognize the degree or the Indian Nursing Council Act of 1947 itself does not provide for a recognition but if there is a University established under the Act or Parliament or a State legislature and the University existed till the Act was struck down by a decision of the Hon'ble Supreme Court, the degree obtained through such a University would require no recognition from anybody. The recognition comes through the very fact that the institute that awarded the degree is established under a University through an enactment."

6. The effect of a degree through an institute affiliated to University and the non-necessity of obtaining approval from any other body was affirmed by the Hon'ble Supreme Court in Bharathidasan University and Anr. v. All India Council for Technical Education & Ors., AIR 2001 SCC 2861, referring to a University established under the Bharthidasan University Act of 1981, a degree granted by University established, the Hon'ble Supreme Court held, was not required to seek prior approval of the All India Council for the Technical Education (AICTE) to start a department for imparting a course or programme in technical education.

....

As stated earlier, it is not in dispute that the Respondent No.3-University is a University established under the statute and, therefore, in view of the law laid down in the above referred cases that a degree, diploma or any qualification awarded by any University, established under the statute, is automatically

recognized and needs no recognition by any other authority, there is no hesitation in holding that the Respondent No.2-RNC cannot refuse to register the Petitioners under the provision of Act of 1964 on the ground that the Respondent No.3-University, from which the Petitioners have completed GNM and ANM courses, is not recognized by the INC. Hence, this writ petition is allowed. The respondent No.2- RNC is directed to consider the request of the petitioners expeditiously preferably within a period of two months from the date of production of certified copy of this order, and if the petitioners are otherwise eligible, necessary registration be granted to them.”

2. Rajasthan Nursing Council v. Singhania University, D.B.S.A.W. No.671/2018, High Court of Rajasthan (Jodhpur)

Facts of the case:

1. Aggrieved by the order of the Single Judge, High Court of Rajasthan (Jodhpur), Rajasthan Nursing Council preferred Appeal before the Division Bench challenging the said order.
2. The contention of the Rajasthan Nursing Council was that the students are not entitled to be registered since Singhania University is not recognised by the Council.

Decision of the Court:

The Hon'ble Court after following the judgments of the Hon'ble Supreme Court upheld the order of the Ld. Single Judge and held as under:

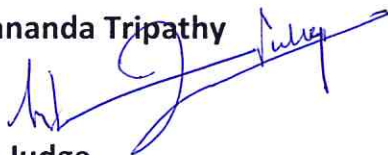
“After hearing learned counsel for the parties, first of all it is required to be observed that in the grounds of the writ petition no other ground has been taken by the appellant except the ground which is incorporated and mentioned above. The only argument and ground taken in the appeal is that registration is required from appellant RNC by the Singhania University, which is established by law. We have considered the rival submissions and come to the conclusion that once the controversy has already been adjudicated by the Hon'ble Apex Court in the case of Dr. B.L. Asawa v. State of Rajasthan & Ors. reported in AIR 1982 SC 933 and in case of Mrs. Madhu Santosh v. State of

Rajasthan (SBCWP NO.2502/1989), decided on 21.2.1991 while relying upon the aforesaid judgment then there is no question to hold that any error has been committed by the learned Single Judge in directing the Appellant RNC so as to deny the registration on the pretext that recognition is necessary from the appellant Rajasthan Nursing Council. We are of the firmed opinion that if any University is established by law and imparting the course in the form of diploma and degree or qualification, that cannot be questioned by the appellant RNC for the purpose of registration. We have considered the judgment cited by the learned counsel for the appellant in the case of Gand Mal Dhaker & Ors. Vs. State of Rajasthan (DBSAW No.955/2011), decided on 17.2.2017 in which question of appointment and qualification was involved and here the controversy is only with regard to registration, therefore, the judgment rendered in aforesaid case not applicable in the present case. In our opinion no error has been committed by the learned Single Judge so as to allow the writ petition filed by the respondents while following the adjudication made by the Hon'ble Apex Court, in the case of Dr. B.L. Asawa (supra) which is subsequently followed by this court in the case of Mrs. Madhu Santosh (supra). Consequently, the instant special appeal is hereby dismissed."

Based on the aforesaid, it is opined that the medical students of Singhania University will be eligible/ entitled to appear in the National Licentiate Exam when held after coming into force of the National Medical Commission Act.

Opined accordingly.

Sachidananda Tripathy



Retired Judge