

A THE NATIONAL MEDICAL COMMISSION

v.

POOJA THANDU NARESH & ORS.

(Civil Appeal Nos. 2950-2951 of 2022)

B APRIL 29, 2022

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

C *Medical Education: Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002 – Online Clinical Training – Provisional registration declined on the ground that the student had not completed the ninth semester in part and tenth semester completely – Clinical training for tenth semester was done online – Whether the degree granted by the Foreign Institute even in respect of clinical training through online mode is binding on the Appellant-*  
D *Commission and whether the student has to be provisionally registered – Appellants argued that clinical training cannot be imparted through online mode as it is the actual training involving diagnosis and interactions with the patients – Respondents contended that acquiring primary medical qualification from the Foreign Medical Institute was acceptable for grant of registration as per*  
E *Regn.2(c) read with Regn.2(e) – Held: Regn.4(3) makes it mandatory that a candidate should have studied for the medical course at the same institute located abroad for the entire duration of the course – Appellant is not bound to grant provisional registration to the student who has not completed the entire duration of the course*  
F *from the Foreign Institute including the clinical training – Without practical training, there cannot be any doctor who is expected to take care of the citizens of the country.*

G *Constitution of India: Right to Equality – Held: Certain students having been granted provisional registration will not confer any right to the student to claim provisional registration so as to undergo the internship – There cannot be any equality in illegality.*

**Disposing of the appeals, the Court**

**HELD:1. The student admittedly has not completed clinical training which was part of the curriculum in the tenth semester,**

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may be she has not completed part of clinical training in the ninth semester as well as per the curriculum. [Para 14][356-B] A

2. The Eligibility Regulations are to ensure that a student meets the minimum eligibility condition as per the Graduate Medical Education Regulations, 1997, but after completing the curriculum, a candidate has to qualify the Screening Test, provided the entire duration of the course has been completed at the same institute located abroad. The question to be examined is as to whether the degree granted by the Foreign Institute even in respect of clinical training is binding on the appellant and the student has to be provisionally registered. The appellant is not bound to grant provisional registration to the student who has not completed the entire duration of the course from the Foreign Institute including the clinical training. [Para 15][356-C-D] B C

3. No doubt, the pandemic has thrown new challenges to the entire world including the students but granting provisional registration to complete internship to a student who has not undergone clinical training would be compromising with the health of the citizens of any country and the health infrastructure at large. [Para 16][356-E] D

4. The argument that certain students have been granted provisional registration will not confer any right with the student to claim provisional registration so as to undergo the internship. There cannot be any equality in illegality. [Para 20][356-B] E

5. The Appellant is directed to frame a scheme as a one time measure within two months to allow the student and such similarly situated students who have not actually completed clinical training to undergo clinical training in India in the medical colleges which may be identified by the Appellant for a limited duration as may be specified by the Appellant, on such charges which the Appellant determines. [Para 25][359-B-C] F

*Orissa Lift Irrigation Corporation Ltd. and Ors. v. Rabi Sankar Patro and Ors. (2018) 1 SCC 468: [2017] 13 SCR 921 – relied on.* G

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- A *Medical Council of India v. J. Saai Prasanna and Ors.*  
**(2011) 11 SCC 748 : 2011 (6) SCALE 400; Chandigarh  
 Administration and Ors. v. Jagjit Singh and Ors. (1995)  
 1 SCC 745 : [1995] 1 SCR 126 – referred to.**

**Case Law Reference**

- |   |                          |                    |                |
|---|--------------------------|--------------------|----------------|
| B | <b>(2011) 11 SCC 748</b> | <b>referred to</b> | <b>Para 12</b> |
|   | <b>[2017] 13 SCR 921</b> | <b>relied on</b>   | <b>Para 18</b> |
|   | <b>[1995] 1 SCR 126</b>  | <b>referred to</b> | <b>Para 20</b> |

- C CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2950-  
 2951 of 2022.

From the Judgment and Orders dated 29.07.2021 and 20.09.2021  
 of the High Court of Judicature at Madras in W.P. No. 9703 of 2021.

- D Vikas Singh, Sr. Adv., Gaurav Sharma, Dhawal Mohan, Prateek  
 Bhatia, Advs. for the Appellant.

Amit Anand Tiwari, AAG, Dr. Joseph Aristotle S., Ms. Mary Mitzy,  
 Ms. Devyani Gupta, Ms. Tanvi Anand, V. Ramasubramaniam, T. Harish  
 Kumar, Navneet Dugar, Subham Kothari, M. P. Parthiban, K. K. Mani,  
 T. Archana, Vinaj Rajput, Advs. for the Respondents.

- E The Judgment of the Court was delivered by

**HEMANT GUPTA, J.**

- F 1. The present appeals are directed against orders dated 29.7.2021  
 and 20.9.2021 passed by the High Court of Judicature at Madras in the  
 writ petitions filed for quashing the circulars issued by the Tamil Nadu  
 Medical Council on 12.11.2020 and 24.12.2020 and consequential orders  
 of directing respondent No. 1/writ petitioner<sup>1</sup> to undergo two months of  
 Compulsory Rotatory Residential Internship,<sup>2</sup> followed by one year of  
 internship before granting permanent registration under the Indian Medical  
 Council Act, 1956<sup>3</sup> (now repealed by the National Medical Commission  
 Act, 2019).

- G 2. The brief facts leading to the present appeals are that the student  
 and other similarly situated students after qualifying the eligibility test

<sup>1</sup> For short, the 'student'

<sup>2</sup> For short, the 'CRR1'

H <sup>3</sup> For short, the 'Act'

i.e. as per “The Eligibility Requirement for Taking Admission in an Undergraduate Medical Course in a Foreign Medical Institution Regulations, 2002<sup>4</sup> joined medical colleges in the People’s Republic of China, such as Qingdao University Faculty of Medicine<sup>5</sup>. It is the stand of the students that they have undergone nine semesters of their academic course including clinical training on the campus. However, due to the outbreak of COVID-19 pandemic, the clinical training for the subjects of Ophthalmology, Otorhinolaryngology and Nuclear Medicine in the 10<sup>th</sup> Semester was done online and that they have been granted degree of Bachelor of Medicine & Bachelor of Surgery (MBBS) after qualifying in all the subjects as per the teaching plan till May, 2020 by the Foreign Institute. According to the student, some of her fellow students have been granted provisional registration by the Tamil Nadu Medical Council but she has been declined such provisional registration which led to filing of number of writ petitions before the High Court. The argument is that since she has been declared qualified by the Foreign Institute, the only requirement before provisional registration is qualifying in the Screening Test in terms of the Screening Test Regulations, 2002<sup>6</sup>. As she has qualified such Screening Test, therefore, the condition in the statute read with the Screening Regulations stands satisfied. Hence, the decision of the Medical Council not to grant provisional registration is not justified in law.

3. The High Court in its order dated 29.7.2021 passed the following directions:

“i) The impugned circulars dated 12.11.2020 and 24.12.2020 passed by the third respondent, rejecting the claim of the petitioners are quashed, as far as the petitioners are concerned.

ii) The petitioners shall make their individual application to the third respondent for provisional registration for doing their CRRl along with the documents, as required by the second respondent, within a period of one week from the date of receipt of a copy of this order.

iii) On such application being made by the petitioners, the third respondent shall verify the original documents and consider their application for issuing certificate of provisional registration.

<sup>4</sup> For short, the ‘Eligibility Regulations’

<sup>5</sup> For short, the ‘Foreign Institute’

<sup>6</sup> For short, the ‘Screening Regulations’

A           iv) The above said exercise shall be completed within two weeks from the date of receipt of the application from the petitioners.”

4. Subsequently, writ petitions were listed under the caption “for clarification” and thereafter an order was passed by the High Court with the following directions:

B           “(a) the petitioners who submit their applications to the Tamil Nadu Medical Council shall be provisionally registered and they shall be permitted to undergo the internship (CRRRI);

C           (b) Taking into consideration the fact that the petitioners had not undergone the practical and clinical training during the MBBS Course in physical form in the medical university where they had undergone the course, there shall be a direction to the effect that the petitioners will undergo the internship for a period of 14 months and the additional 2 months shall be utilized for providing practical and clinical training in the initial phase of their internship and thereafter, the regular internship shall follow for a period of 12 months (1 year). This Court is aware of the fact that this requirement goes beyond what is provided under clause 11 of the screening test regulations 2002. However, instead of making the students go back to the respective universities and complete the practical and clinical training which may be impossible in the prevailing situation, it will be a better via-media to make them undergo the same in the initial phase of the internship for a period of 2 months. This will sufficiently satisfy the requirements for maintaining better quality in medical education and at the same time safeguarding the interest of the students;

F           (c) It is made clear that all these directions issued by this Court are peculiar to the given situation and this can never be taken as a precedent in future. The Tamil Nadu Medical Council shall ensure that the students who apply for provisional registration are possessing screening test passing certificate issued by the concerned authority and only thereafter register them provisionally,

G           and:

(d) This Court expects that this order will be made applicable to all the students who are similarly placed and they are not made to knock the doors of this Court.”

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5. Some of the statutory provisions of the Act relevant for the purpose of the present appeals read thus: A

“13. (4-A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified by the Central Government under sub-section (3), shall not be entitled to be enrolled on any Medical Register maintained by a State Medical Council or to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies the said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person. B C

(4-B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4-A): D

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

6. The Eligibility Regulations and the Screening Regulations were published in the Government of India Gazette on the same date i.e., 18.2.2002. It is not disputed that the student has qualified the eligibility test which made her eligible to undergo the medical course in the Foreign Institute. The relevant provisions of the Eligibility Regulations read as under: G

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A “9. After verification, as required, if the candidate is found to fulfil the eligibility criteria, the Council shall issue an Eligibility Certificate in the prescribed format to the candidate certifying that he/she is eligible to join a medical institution outside India to obtain a primary medical qualification. The certificate shall indicate that on return after obtaining the foreign primary medical qualification, the

B candidate shall have to undergo a screening test, subject to fulfilment of the conditions prescribed in the Screening Test Regulations, 2002, and that passing this test shall only entitle him to provisional/permanent registration by the Medical Council of India or the State Medical Councils.

C Provided that he/she has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree.

D 10. In case the candidate does not fulfil any of the qualifying criteria the Council may reject his application for issue of Eligibility Certificate giving the reasons therefore.

11. The issue of a eligibility certificate to a candidate shall not entitle him to any right, whatsoever, other than to take admission in an undergraduate medical course in a foreign medical institute.”

E 7. Some of the relevant conditions of the Screening Regulations read as thus:

F “2. (c) “Permanent Registration” means registration for the purpose of enrolment on any State Medical Register or Indian Medical Register after obtaining the Primary Medical qualification followed by completion of such practical training as prescribed either in India or abroad as per the provisions of the Act;

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G (f) “Primary Medical qualification” means a medical qualification awarded by any medical institution outside India which is a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated and which is equivalent to MBBS in India;

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(g) “Provisional Registration” means provisional registration in a State Medical Register or Indian Medical Register for the purpose of undergoing practical training in India as prescribed and for no other purpose by an Indian citizen possessing any primary medical qualification but has not undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification;

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4. Eligibility criteria. – No person shall be allowed to appear in the screening test unless –

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(3) he/she has studied for the medical course at the same institute located abroad for the entire duration of the course from where he/she has obtained the degree:

Provided in cases where Central Government is informed of condition of war, civil unrest, rebellion, internal war or any such situation wherein life of Indian citizen is in distress and such information has been received through the Indian Embassy in that country then the Council shall relax the requirement of obtaining medical education from the same institute located abroad in respect of which communication has been received from the Indian Embassy in that country.

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5. The purpose.—The purpose of conducting the screening test shall be only to determine the eligibility or otherwise of a candidate for his or her registration with the Medical Council of India or any State Medical Council and qualifying the same shall not confer any other right, whatsoever, on a candidate.

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11. The Prescribed Authority shall intimate the result of the Screening Test to the candidates as well as to the Secretary, Medical Council of India and the State Medical Councils. The unsuccessful candidates shall also be appropriately informed. The candidates who qualify the Screening Test may apply to the Secretary, Medical Council of India, New Delhi or to any State



- A Medical Council for provisional registration/permanent registration along with the requisite registration fee in favour of Secretary, Medical Council of India or the State Medical Council. The Medical Council of India or the State Medical Councils shall issue provisional registration to such successful candidates, who are yet to undergo one year internship in an approved institution and
- B issue permanent registration to such eligible candidates who have already undergone one year internship, as the case may be.”

8. A notification notifying the National Medical Commission (Foreign Medical Graduate Licentiate) Regulations, 2021<sup>7</sup> dated 18.11.2021 has been published. Relevant provisions of the said
- C Regulations read thus:

“5. Applicability of these regulations. – (1) Notwithstanding anything contained in regulation 4, these regulations shall not be applicable –

- D (a) To foreign medical graduates who have acquired a foreign medical degree or primary qualification, as the case may be, prior to the coming into force of these regulations;
- (b) to candidates who are pursuing their education in foreign institutions prior to the coming into force of these regulations; and
- E (c) to such foreign medical graduates who are specifically exempted by the Commission or the Central Government, as the case may be, by notification.
- (2) The foreign medical graduates who have acquired a foreign medical degree or primary qualification, as the case may be, and
- F the candidates who are pursuing their education in foreign institutions, prior to the coming into force of these regulations, shall be governed by the erstwhile applicable regulations.

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- G SCHEDULE-I  
(See regulation 4)

CRITERIA TO RECOGNISE FOREIGN MEDICAL GRADUATES  
APPLYING FOR LICENCE OR PERMANENT REGISTRATION  
TO PRACTICE IN INDIA

- H <sup>7</sup>For short, the ‘2021 Regulations’

1. The guiding principle for licensing a foreign medical graduate to practice in India is to ensure that the Foreign Medical Graduate fulfils the requirements of education and training equivalent or commensurate with that of an Indian medical graduate. A

2. Eligibility for primary medical qualification in a country outside India: B

(i) Duration of course and training in subjects leading to primary medical qualification:

(a) Any person who pursue the foreign medical degree should have undergone a course of theory, practical and clinical training equivalent to Bachelor of Medicine and Bachelor of Surgery (MBBS) of India; and C

(b) Should have been completed internship of twelve months in addition to such course referred to in clause (a), in the same foreign institution where the primary medical qualification has been obtained, along with hands-on training in clinical subjects including but not limited to Community Medicine, General Medicine, Psychiatry, Paediatrics, General Surgery, Anaesthesia, Obstetrics and Gynaecology, Orthopaedics, Otorhinolaryngology, Ophthalmology, Dermatology, Emergency or Casualty services, lab services and their sub-specialties.” E

9. The appellant had issued a clarification on 4.3.2022 that the 2021 Regulations are not applicable to foreign medical graduates who have acquired a foreign medical degree or primary qualification, as the case may be, prior to 18.11.2021. However, it further prescribes as under:

“6. Taking into the consideration all the relevant provisions of NMC’s Regulations and circumstances, the Commission decided to issue the detailed guidelines/process which is required to be followed by State Medical Councils for grant of registration of FMGs till further instructions from the Commission or implementation of NExT Exam, whichever occurs earlier. State Medical Councils should ensure the following conditions/criteria while processing the case for grant of registration of FMGs: F G

(i) The medical qualification/degree must be registerable to practice medicine in their respective jurisdiction of the country in which the medical degree is awarded and at par with the license to H

- A practice medicine given to citizen of that country.
- (ii) Documentary evidence certifying successful completion of physical training or internship during the medical qualification equivalent to MBBS, if conducted in foreign institute.
- B (iii) Copy of passport with VISA and immigration details.
- (iv) Foreign medical Graduate Examination (FMGE) conducted by National Board of Examination (NBE) should be cleared by the candidates seeking registration in India.

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- C 10. It is admitted by the student that she has not undergone the practical and clinical training in the physical form, though she has undergone the course through online mode for the entire duration, therefore, she satisfies the requirement under Regulation 4(3) of the Screening Regulations.
- D 11. The argument of Mr. Vikas Singh, learned senior counsel for the appellant, is that in terms of the statutory Regulations, the student has to study the medical course in the same institute located abroad for the “entire duration”. It has been argued that as per the dates of the semester and the date of departure of student from China, it shows that the student has not completed the ninth semester in part and tenth semester completely, therefore, the student is not eligible for provisional registration to undergo one year internship so as to be eligible for registration as a professional under the Act. The argument is that clinical training cannot be imparted through online mode as it is the actual training involving diagnosis and interactions with the patients. There cannot be any online clinical training which will satisfy the requisite condition of the Screening Regulations.

12. Mr. S. Nagamuthu, learned senior counsel for the respondent-student relied upon a judgment of this Court reported as *Medical Council of India v. J. Saai Prasanna & Ors.*<sup>8</sup> to contend that the student is eligible for provisional registration. It was contended that the action of the Tamil Nadu Medical Council is completely arbitrary and discriminatory as some students have been granted provisional registration not only by the Tamil Nadu Medical Council but also by the Medical Council of different States. Therefore, declining of provisional registration to the

H <sup>8</sup> (2011) 11 SCC 748



A candidate should have studied for the medical course at the same institute located abroad for the entire duration of the course. Though, this Court has delivered judgment after the amendment but the student had obtained the degree prior to the amendment of the Regulations. Therefore, such judgment would not be relevant in the present matter.

B 14. The fact is that the student has admittedly not completed clinical training which was part of the curriculum in the tenth semester, may be she has not completed part of clinical training in the ninth semester as well as per the curriculum.

C 15. The Eligibility Regulations are to ensure that a student meets the minimum eligibility condition as per the Graduate Medical Education Regulations, 1997, but after completing the curriculum, a candidate has to qualify the Screening Test, provided the entire duration of the course has been completed at the same institute located abroad. The question to be examined is as to whether the degree granted by the Foreign Institute even in respect of clinical training is binding on the appellant and the student has to be provisionally registered. We find that the appellant is not bound to grant provisional registration to the student who has not completed the entire duration of the course from the Foreign Institute including the clinical training.

E 16. No doubt, the pandemic has thrown new challenges to the entire world including the students but granting provisional registration to complete internship to a student who has not undergone clinical training would be compromising with the health of the citizens of any country and the health infrastructure at large.

F 17. The students had taken admission in medical colleges outside India for the reason that they could not get admission in the medical colleges in India. China alone has a number of Institutes offering medical courses conducted in English language. The Act and the Screening Regulations are framed in such a way that the course completed by the students is treated to be valid in India provided that the medical qualification is recognised for enrolment of the medical practitioner in that country. Obviously, none of the Indian students are going to practice medicine in the foreign country, therefore, the grant of degree to the Indian students has no corresponding obligation that such students actually practice medicine in that country. In other words, the medical course is permitted to be completed abroad to practice in India only on

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the basis of an endorsement that the completion of such medical course entitles them to practice in the said foreign country. The courses are designed in such a way to attract students to undertake admission in the Foreign Institutes so that such students, become eligible to practice medicine in India. The very framework of the Regulations was compromising the interests of the Indian nationals and the health infrastructure in India. However, the malice has been corrected by the 2021 Regulations but such Regulations are not applicable to the students who have taken admission in the Foreign Institutes prior to 18.11.2021.

18. The students claim to have completed clinical training through online mode. The online mode for practical training has come up for consideration before this Court in a judgment reported as *Orissa Lift Irrigation Corporation Limited v. Rabi Sankar Patro & Ors.*<sup>9</sup> wherein the degree in the discipline of engineering was being conferred by online method as part of distance education course. Earlier, it was Engineering Degree by online mode and now Degree in Medicine and Surgery by online mode. This Court held that the practicals form the backbone of such education which is hands-on approach involving actual application of principles taught in theory. It was held as under:

“48. Technical education leading to the award of degrees in Engineering consists of imparting of lessons in theory as well as practicals. The practicals form the backbone of such education which is hands-on approach involving actual application of principles taught in theory under the watchful eyes of Demonstrators or Lecturers. Face to face imparting of knowledge in theory classes is to be reinforced in practical classes. The practicals, thus, constitute an integral part of the technical education system. If this established concept of imparting technical education as a qualitative norm is to be modified or altered and in a given case to be substituted by distance education learning, then as a concept the AICTE ought to have accepted it in clear terms. What parameters ought to be satisfied if the regular course of imparting technical education is in any way to be modified or altered, is for AICTE alone to decide. The decision must be specific and unequivocal and cannot be inferred merely because of absence of any Guidelines in the matter. No such decision was ever expressed by AICTE. ....”

<sup>9</sup>(2018) 1 SCC 468

A 19. Therefore, without practical training, there cannot be any Doctor who is expected to take care of the citizens of the country. Hence, the decision of the appellant not to grant provisional registration cannot be said to be arbitrary.

B 20. The argument that certain students have been granted provisional registration will not confer any right with the student to claim provisional registration so as to undergo the internship. There cannot be any equality in illegality. Reference may be made to a judgment of this Court reported as *Chandigarh Administration v. Jagjit Singh*<sup>10</sup>.

C 21. The argument that if a student has a right, then such right can be enforced independent of the order passed by the courts is not tenable. Qualifying in the Screening Regulations is no proof of the clinical experience, if any, gained by the students. The Screening examination is based upon Optical Mark Reader (OMR) answers and has no correlation with any practical training. We do not find that in terms of the Screening Regulations, the students are entitled to the provisional registration.

D 22. However, the fact remains that the students were permitted to undergo medical course abroad and that they have completed their curriculum according to the certificate granted by such Foreign Institute. Therefore, such national resource cannot be permitted to be wasted which will affect the life of young students, who had taken admission in the foreign Institutes as part of their career prospects. Therefore, the services of the students should be used to augment health infrastructure in the country. Thus, it would be necessary that the students undergo actual clinical training of such duration and at such institutes which are identified by the appellant and on such terms and conditions, including the charges for imparting such training, as may be notified by the appellant.

E 23. We are unable to agree with the High Court that instead of three months of clinical training in China, two months training would be sufficient for provisional registration apart from the 12 months of internship. The Courts are not expert in deciding an academic curriculum or the requirement of the clinical training which may be required to be satisfied by the students.

F 24. Mr. Vikas Singh submitted that the pandemic and the crisis in the Ukraine has thrown new challenges for the appellant and that the

H <sup>10</sup> (1995) 1 SCC 745

appellant shall take a holistic view as to how to safeguard the interests of the Indian students who were studying abroad and at the same time, not compromising with the quality of medical education expected from them in India. A

25. Therefore, we direct the appellant

- i) to frame a scheme as a one time measure within two months to allow the student and such similarly situated students who have not actually completed clinical training to undergo clinical training in India in the medical colleges which may be identified by the appellant for a limited duration as may be specified by the appellant, on such charges which the appellant determines. B C
- ii) It shall be open to the appellant to test the candidates in the scheme so framed in the manner within next one month, which it considers appropriate as to satisfy that such students are sufficiently trained to be provisionally registered to complete internship for 12 months. D

26. With the aforesaid directions, the appeals stand disposed of.