

National Board Of Examinations vs Vinayaka Mission University on 29 April, 2010

Author: Elipe Dharma Rao

Bench: Elipe Dharma Rao, K.K.Sasidharan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2010

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
and
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.716 OF 2010
& M.P.Nos.1 and 3 of 2010

National Board of Examinations
Ministry of Health and Family Welfare
Government of India, Ansari Nagar
New Delhi-110 029
rep. by its Assistant Director

..Appellant

Vs.

1. Vinayaka Mission University
(Declared under section 3 of the U.G.C. Act)
N.H. 47, Sankari Main Road
Ariyanoor Salem-636 308
rep. by its Pro Chancellor Dr.A.S.Ganesan
2. Medical Council of India
rep.by its Member Secretary
Aiwan E Galib Marg, Kola Road
New Delhi.
3. The Union of India
rep.by its Secretary to Government
Ministry of Human Resources Development
Department of Higher Education

New Delhi.

4. Gayathri Prasad
5. Vinit Kumar Jain
6. Saswati Hazarika
7. Vijay Kumar Kolluri

Respondents 4 to 7 are impleaded
as per order dated 19.4.2010
in M.P.No.2 of 2010

..Respondents

Prayer: Writ appeal against the order dated 23.3.2010 passed by this court in
For Appellant : Mr.Dhruva
for M/s. Anand, Samy and Dhruva

For Respondents : Mr.R. Yashod Varadhan
Senior Counsel
for Mr.C.V.Subramanian for R1

Mr.V.P.Raman for R2

Mr.Haja Mohideen Gishthi for R3

Mr.Vijay Narayan
Senior Counsel
for Mr.B.K.W.Singh for RR 4 to 7

J U D G M E N T

ELIPE DHARMA RAO, J A novel method adopted by a Deemed University located in the State of Tamil Nadu to open their overseas campus at Thailand on the basis of a memorandum of understanding with an overseas private University, without the No Objection Certificate from the Government of Thailand or recognition from their Medical Council and their attempt to project as if the degree granted from their foreign campus would enable the students to register their names before the Medical Council of Thailand and to practise medicine in the said country and their claim that their students satisfies the eligibility criteria to appear for the Screening Test and to practise medicine in India, knowing very well that the Deemed University has no recognition in Thailand which is a mandatory condition for appearing in the Screening Test, is the subject matter of this writ appeal.

2. The first respondent filed a writ petition in W.P.No.19658 of 2009 with the following prayer.

"To issue a writ of Mandamus or any other appropriate Writ, order or direction in the nature of a Writ of Mandamus directing the first respondent to consider and grant necessary permission for the twenty one Indian students, who have obtained MBBS Degree through the Off-shore Campus, Bangkok, Thailand of the petitioner to

undertake Foreign Medical Graduates Examination (Screening Test) September, 2009 to enable them to undergo Internship/C.R.R.I in India as part of the MBBS program to be held on 27.9.2009 and to get themselves enrolled as Medical Practitioner in India after the completion of the Internship of one year as requested in the letter of the petitioner dated 14.9.2009."

3. In the affidavit filed in support of the writ petition, the first respondent contended thus:

(a) M/s. Vinayaka Mission University (hereinafter referred to as "the Deemed University) is a University declared under Section 3 of the University Grants Commission Act by notification dated 1 March, 2001 issued by the Central Government. The University has Constituent Colleges in the field of Medicine, Dental, Engineering and Management Program. The Deemed University applied to the Central Government for starting an Off-shore Campus to offer Medical Programs at Bangkok, Thailand. The said application was processed by the Government of India and a notification was issued on 10 October, 2006 granting approval with an intake of 100 under-graduate Medical students per annum as per the terms and conditions of the Memorandum of Understanding signed between the Deemed University and Rangsit University, Bangkok.

(b) As per the norms of the Medical Council of India, the MBBS program comprises of four and half years study followed by one year satisfactory completion of Compulsory Rotatory Resident Internship. Based on the approval granted by the Central Government for starting the Off-shore Campus Medical Program at Bangkok, the Deemed University has admitted twenty one students to undergo the undergraduate Medical Program at Bangkok and those students have completed four and half years of study and they were issued with a Provisional Certificate as per the guidelines and instructions issued by the Central Government. The students have expressed their desire to do Internship/Compulsory Rotatory Resident Internship in India. Accordingly, they made an application before the appellant to appear for the Foreign Medical Graduates Examination (Screening Test), September, 2009, so as to enable them to complete the Internship in India and enroll themselves as Medical Practitioners in India.

(c) The appellant considered the application submitted by the students and as per their letter dated 24 August, 2009, students were directed to furnish photo copy of Foreign Medical Qualification Certificate Apostilled/Attested by Indian Embassy with a further attestation by a Gazetted Officer in India. This was the only requirement imposed by the appellant. Accordingly, the Deemed University as per their letter dated 14 September, 2009 addressed to the appellant, enclosed the photo copies of the Foreign Medical Qualification from its Off-Shore Campus at Bangkok duly attested by a Gazetted Officer in India, in respect of those twenty one candidates and requested the appellant to allow the candidates to appear for 2009 examination. The Deemed University also produced a copy of the Government of India notification

dated 10 October, 2006 granting approval for Off-Shore Campus Programme at Bangkok and it was also pointed out that clause No.9(v) of the Notification regarding Screening Test requirement is specific and without any ambiguity and therefore requested the appellant to issue necessary documents to the candidates, to write the Screening Test scheduled to be held in the month of September, 2009. However there was no response from the appellant. In such circumstances, the Deemed University filed the writ petition for issuance of a writ of Mandamus, so as to enable those twenty one students to appear for the Screening Test.

4. The appellant filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the writ petition. The material averments in the counter affidavit reads thus:-

(a) The appellant/National Board of Examinations (hereinafter referred to as "the National Board") was established by the Ministry of Health and Family Welfare in the year 1975. Subsequently the appellant was granted independent autonomous status in the year 1982. The status was granted under the provisions of the Medical Council Act, 1956. The National Board was set up to evolve uniform standards of post-graduate and post-doctoral examinations in Medical Sciences on par with international standards. The Ex-officio members of the National Board consist of Director General of Health Services, Government of India; Chairman, University Grants Commission; Director General Armed Forces Medical Services; Secretary-Higher Education, Ministry of Human Resources Development, Additional Secretary and Financial Advisor, Ministry of Health and Family Welfare, President, Medical Council of India; President, Dental Council of India; President, National Academy of Medical Sciences, Ministry of Health and Family Welfare, Government of India; President, Indian Medical Association; Chairman, Post Graduate Committee, Medical Council of India and Executive Director, National Board of Examinations.

(b) The National Board conducts Diplomate of National Board and other examinations on all India basis. The DNB qualification is internationally recognized. Besides DNB examination, the National Board conducts Centralized Entrance Test; Fellowship Entrance Examination; Fellowship Exit Examination and Screening Test.

(c) The purpose of conducting Screening Test is to enable those Indian Nationals with Foreign Medical Qualifications to apply for registration with the Medical Council of India/State Medical Councils.

(d) The Screening Test Regulations, 2002 and "Eligibility Requirement for taking admission in an undergraduate medical course in Foreign Medical Institution Regulations, 2002", provides that only those students, who have undergone undergraduate medical course in a Foreign Country can appear for the screening test, provided such certificates are recognized in the Country where they had their education and which would enable them to practise profession in the said Country. The notification further provides that the name of the institution awarding the degree

should be included in the World Directory of Medical Schools, published by the World Health Organization or it should be confirmed by the Indian Embassy concerned, to be a recognized qualification for enrolment as medical practitioner in the Country in which the institution awarding the said qualification is situated.

(e) The name of the first respondent University does not figure in the World Directory of Medical Schools as maintained by the World Health Organization till 2007. Therefore the National Board took up the matter with the Indian embassy and the Indian Embassy as per their confidential report dated 25 September, 2009 informed the National Board that Vinayaka Mission University is not a recognized medical institution in Thailand. Therefore the students were not permitted to appear for the screening test. Those students have not filed writ petitions. It was only the University filed the writ petition, even though they have nothing to do with the Screening Test.

(f) The High Court at Madras has no jurisdiction to take up this writ petition. The National Board has no office within the jurisdiction of the High Court of Madras. The entire cause of action has arisen within the jurisdiction of the High Court of Delhi and as such the very writ petition filed before this Court is not maintainable.

5. The Medical Council of India/second respondent herein filed a counter detailing the various notifications issued by the Medical Council in the matter of medical education including the notification regarding conduct of Screening Test by the National Board. In paragraph 38 of the counter they have stated that all the twenty one students have to qualify the screening test before applying to the Council for registration in accordance with the "Screening Test Regulations, 2002" and "Eligibility Certificate Regulations, 2002." In paragraph 39 of the counter, the second respondent has dealt with the contention taken by the Deemed University regarding the initial return of the application on the ground of attestation by the Indian Embassy of Thailand. However no opinion was given by the medical Council with respect to the said contention, though at first blush it would appear as if the Medical council supported the case of the Deemed University.

6. The writ petition was filed on 23 September, 2009. The Deemed University has also filed an interlocutory application in M.P.No.1 of 2009 to direct the appellant to allow the twenty one candidates to appear for the Screening Test scheduled to be held on 27 September, 2009 by issuing hall ticket. The learned Single Judge as per order dated 24 September, 2009 granted the interim prayer. However it was made clear that the interim direction would be subject to the final orders to be passed in the main writ petition. Subsequently, the University filed another miscellaneous petition in M.P.No.2 of 2009 praying for an order to declare the results of the examination of those twenty one students. When the application was taken up, the learned counsel representing the appellant submitted before the learned Judge that the appellant has no objection to declare the results. Therefore the learned Judge was pleased to pass an order on 9 November, 2009 directing the appellant to declare the results. When the said order was brought to the notice of the appellant, they have filed an application in M.P.No.3 of 2009 to recall the order dated 9 November, 2009 on the ground that they have not entrusted the matter with the said counsel. However the application

was dismissed on 19 November, 2009. The order of dismissal dated 19 November, 2009 was challenged by the National Board in Writ Appeal. Before the Division Bench, the National Board maintained that they have not engaged the Counsel to submit their Non-objections before the Learned Single Judge for declaration of results. The writ appeal was allowed by the Division Bench and the order of the learned Single Judge directing declaration of results was set aside. The matter was subsequently heard by the learned Single Judge.

7. The learned Judge was of the view that the name of the University was found in the Regional Directory of Training Institutions published by the World Health Organization and as such the Deemed University fulfills the conditions stipulated in the notification issued by the Medical Council of India. The learned Judge was of the further opinion that the initial requirement was only to produce the attested copy of certificates and it was duly complied with and as such it was not open to the Board to reject the applications submitted by the candidates for their appearance for Screening Test. Accordingly, the writ petition was allowed. It is the said order which is challenged in this writ appeal.

8. Before the writ court, the students were not parties. Even in the appeal they were not made parties. It was only when the matter was posted "for orders" the students have filed the application to implead them as parties to the writ appeal. Since the issue relates to education, we have allowed the interlocutory application for impleading the students and they were also heard.

9. Learned counsel for the appellant would submit that:

(i) The writ petition before this Court was not maintainable as this Court has no territorial jurisdiction to entertain the writ petition. The appellant/National Board is functioning at New Delhi and the entire cause of action has arisen at New Delhi. The students have paid their fees at New Delhi. Therefore no part of the cause of action has arisen within the jurisdiction of the High Court at Madras and as such, the writ petition should have been dismissed on the ground of jurisdiction.

(ii) The Deemed University has no locus standi to file the writ petition on behalf of students. The applicants before the appellant were only individual students and it was not an application at the instance of the Deemed University. The students have not filed writ petition. Therefore the writ petition at the instance of the University was not maintainable.

(iii) The Deemed University was granted permission by the Central Government for starting an Off-shore Campus at Bangkok. However, in the notification there was a clear indication that the Deemed University has to abide by the norms prescribed by the Medical Council of India. The notification contains a further condition that the students studying in and passing out from the proposed Off-shore campus at Bangkok must qualify for the Screening Test as per the provisions of the Indian Medical Council Act, 1956 and Screening Test Regulations, 2002 framed by Medical Council of India. The University was also given a direction to notify condition No.9(v)

to the prospective students. The Screening Test Regulations contains a specific clause that the Indian citizens holding a foreign degree should satisfy that with the said degree it would enable them to practise medicine in the concerned Country by registering their names before their Medical Council. However there was nothing produced by the Deemed University to demonstrate that the MBBS degree issued by them was valid in Thailand, so as to enable the students to register before the Medical Council of Thailand or practise medicine in the said Country.

(iv) The Memorandum of Agreement entered into by the University with Rangsit University was a private arrangement without the knowledge of Government of Thailand. Merely because the Deemed University was permitted to establish their Off-shore campus in the campus of Rangsit University, it cannot be said that the degree awarded by the Deemed University to those students who have undergone their training in the Off-shore campus, would be recognized by the Government of Thailand for the purpose of registration before the Medical Council of Thailand or to practise medicine in Thailand. Therefore the students, who made applications before the appellant does not satisfy the essential condition of "primary medical education".

(v) The Deemed University has no legal right to approach this court for the issuance of a writ of Mandamus, since the students does not satisfy the eligibility criteria as per the notification issued by the Medical Council of India. Therefore the learned Single Judge was not justified in allowing the writ petition.

10. The learned Senior Counsel for the Deemed University would submit:

(i) The Deemed University was given permission by the Government of India as per notification dated 10 October, 2006 to start an Off-shore campus offering Medical Programs at Bangkok. As per the said notification, the University was permitted to commence under-graduate Medical Course with an intake capacity of hundred students on the terms and conditions mentioned in the Memorandum of Understanding signed by the Deemed University with Rangsit University at Bangkok. Therefore, the students did satisfy the eligibility criteria and as such the appellant was not justified in rejecting the request for participation in the Screening Test.

(ii) The name of the Deemed University was found mentioned in the Regional Directory of World Health Organization dated 23 October, 2009 and therefore there was substantial compliance of the eligibility norms issued by the Medical Council of India.

11. Learned Senior Counsel appearing for the students would submit that:

(i) The students have verified the notification dated 10 October, 2006 issued by the Central Government and only on satisfying that the Deemed University has obtained permission for starting an Off-shore campus at Bangkok that they have joined the

institution. Therefore in the face of the notification dated 10 October, 2006, the appellant was not justified in rejecting the application to write the Screening Test.

(ii) The Rangsit University is a University approved by the Government of Thailand and as such, the Memorandum of Understanding entered into by the said University with the Deemed University permitted them to start an off-shore Campus and as such the degree issued by the said University would qualify for writing the Screening Test.

(iii) The notification issued by the Government of India dated 10 October, 2006 has been marked to the Medical Council of India as well as to the embassy of Bangkok at Thailand and as such all these authorities were aware of the permission granted to the Deemed University to open their Off-shore campus at Bangkok. Therefore it was too late on the part of the statutory authorities to come up with a contention that the Deemed University has no recognition in Thailand and as such the students are not entitled to undergo the Screening Test.

12. The learned counsel for the Medical Council of India, the second respondent in the writ appeal justified the action taken by the appellant Board declining permission to the students to appear for the test. According to the learned Standing Counsel the eligibility certificate issued by the Medical Council of India contains a clear stipulation that it was only a provisional one and mere possession of the eligibility certificate will not enable the students to appear for the Screening Test, unless they were eligible as per the relevant notification. According to the learned counsel, the Deemed University has not produced the order of recognition issued by the Government of Thailand or any other statutory authority similar to that of the Medical Council of India and as such the students were rightly denied permission to appear for the Screening Test. The learned counsel would further contend that Rangsit University is only a private University like any other Deemed University in India and they are not empowered to grant permission for establishment of a medical institution in the Country of Thailand and as such, the certificate issued by the Deemed University has no value in Thailand so as to enable the students to register in the said Country as a medical practitioner. The learned counsel explained the counter affidavit filed by the Medical Council and more particularly paragraph 39. According to the learned counsel, in paragraph 39 the Medical Council has only denied the averments as contained in the affidavit filed in support of the writ petition. Though it would appear as if the Council endorsed the contention raised by the writ petitioner, the fact remains that the Medical Council of India has not supported the contention.

13. The Medical Council of India has been constituted as an expert body under the provisions of the Medical Council of India Act. The Council has been given the responsibility to discharge the maintenance of highest standard of medical education. Therefore, the Medical Council was given the powers to prescribe the minimum standards of medical education, including eligibility standards. Section 13 of the Indian Medical Council Act, 1956 provides for recognition of medical qualifications granted to the citizens of India by certain medical institutions, whose qualifications are not included in the First or Second Schedule to the Act. Section 4A was inserted as per Act 34 of 2001 with effect from 3 September, 2001. Section 13(4A) reads thus:-

"A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognized 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."

14. The Medical Council of India in exercise of the powers conferred under Section 33 of the Indian Medical Council Act issued regulations in the name and style of "Screening Test Regulations, 2002". The entire issue in this writ appeal relates to the eligibility of the students to write the Screening Test. The regulation reads thus:-

"1. Short title and commencement -

(1) These regulations may be called the Screening Test Regulations, 2002.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions :- In these Regulations, unless the context otherwise requires :-

a. "Act" means the Indian Medical Council Act, 1956 (102 of 1956);

b. "Council" means the Medical Council of India constituted under Section 3 of the Act;

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;

d. "Prescribed" means prescribed by regulations made under this Act;

e. "Prescribed Authority" means a medical institution or any other examining body authorized by the Central Government/Medical Council of India to conduct Screening Test.

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; (emphasis supplied) 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;

h. "qualifying examination" means the examination to be qualified to become eligible for admission to MBBS course in India as prescribed in the Graduate Medical Education Regulations, 1997.

i. "registration" means either provisional Registration or Permanent Registration.

3. An Indian citizen possessing a primary medical qualification awarded by any medical institution outside India who is desirous of getting provisional or permanent registration with the Medical Council of India or any State Medical Council on or after 15.03.2002 shall have to qualify a screening test conducted by the prescribed authority for that purpose as per the provisions of Section 13 of the Act :

Provided that a person seeking permanent registration shall not have to qualify the screening test if he/she had already qualified the same before getting his/her provisional registration.

4. Eligibility Criteria: No person shall be allowed to appear in screening test unless :

1. he/she is a citizen of India and possesses any primary medical qualification, either whose name and the institution awarding it are included in the World Directory of Medical Schools, published by the World Health Organization; or which is confirmed by the Indian Embassy concerned to be a recognized qualification for enrolment as medical practitioner in the country in which the institution awarding the said qualification is situated; (emphasis supplied)

2. he/she had obtained 'eligibility Certificate' from the Medical Council of India as per the 'Eligibility Requirement for taking admission in an undergraduate medical course in a Foreign Medical Institution Regulations, 2002'. This requirement shall not be necessary in respect of Indian Citizens who have acquired the medical qualifications from foreign medical institutions or have obtained admission in foreign medical institution before 15th March, 2002."

15. The twenty one students who had their medical education in the Off-shore campus of the Deemed University are all citizens of India. However the issue is as to whether they are having the primary medical qualification within the meaning of Regulation 2 (f) of the Screening Test Regulations, 2002 (hereinafter referred to as "Screening Regulations"). The term "Primary Medical Qualification" contemplates that such qualification should be a recognized qualification for enrolment as a

medical practitioner in the Country in which the institution awarding such qualification is situated and which is equivalent to M.B.B.S in India. The regulation further contains a stipulation that the name of the candidate and the institution awarding the degree should be shown in the World Directory of Medical Schools published by the World Health Organization or the status of the institution should be confirmed by the Indian Embassy concerned.

16. It is true that the Deemed University was given permission by the Government of India as per notification dated 10 October, 2006 for starting an Off-shore campus at Thailand on the basis of the Memorandum of Understanding entered into by the said University with Rangsit University at Bangkok. However such permission was not unconditional. Clause 9 (ii) of the notification provides that the Off-shore campus of the Vinayaka Mission's Research Foundation at Bangkok should be subjected to the laws of the land of Thailand. Clause 9 (iii) indicates that the degree to be awarded by the Deemed University at Thailand should be clearly distinguished from a degree awarded by the said University in India. Clause 9(iv) provides that all norms of Medical Council of India, wherever applicable, will continue to be in force and complied with by the institution. Similarly clause 9(v) provides that the students passing out from the proposed Off-shore campus at Thailand would be required to qualify for the Screening Test as per the provisions of the Indian Medical Council Act, 1956 and Screening Test Regulations, 2002 notified by the Medical Council of India. Therefore it was not a blanket permission given to the Deemed University to open the Off-shore campus and to conduct medical course in Thailand, which would automatically give right to the students to appear for the Screening Test so as to enable them to register before the Medical Council. In fact, clause 9(vi) clearly provides that the Deemed University has to bring the condition mentioned in sub-para 9(v) to the notice of the prospective students. The said regulation clearly provides the necessity to appear for Screening Test in India.

17. Admittedly, the Government of Thailand has not given permission to the Deemed University to establish their Off-shore campus in Thailand. Similarly, the Medical Council of Thailand has not given any kind of permission or recognition to the Deemed University, agreeing to honour the degree awarded by them and to enable the students who had their education in the Off-shore campus to register their name in the said Country or to practise medicine in Thailand. Therefore the Deemed University invented a device to overcome the mandatory provision as contained under Section 13(4A) of the Indian Medical Council Act, 1956. Accordingly they have entered into an agreement with a private University functioning at Thailand. As per the Memorandum of Understanding, the Deemed University was permitted to establish an Off-shore campus in the campus of Rangsit University. The letter of Rangsit University dated 6 January, 2005 reads thus:-

"Rangsit University hereby notify that the degrees awarded by Vinayaka Mission's Research Foundation, Deemed University in MBBS Program delivered at Rangsit

University in Thailand is recognised as Bachelor Degree in Medicine and further states that the students with this MBBS degree shall be eligible for admission into further study program in the field of Medicine at Rangsit University."

18. The Memorandum of Understanding dated 10 September, 2004 entered into between the Deemed University and Rangsit University and their letters dated 6 January, 2005 and 14 September, 2005 are the only documents in the possession of the Deemed University to show that their MBBS course was recognized in Thailand. However very strangely none of these letters contain a statement that the Government of Thailand has permitted the Rangsit University for granting permission to open an Off-Shore campus of a Foreign University in their campus or that the medical degree which would be awarded by such Foreign University was a valid degree in Thailand. The Memorandum of Understanding and the letters given by the Rangsit University are all matters of private dealings between the said University and the Deemed University. Neither the Government of Thailand nor the Medical Council of Thailand have anything to do with the arrangement entered into between these two private Universities.

19. The core question is as to whether the MBBS degree awarded by the Deemed University by conducting course in their Off-shore Campus situated in Rangsit University Campus is a valid degree enabling the degree holders to enroll themselves as medical practitioners in Thailand.

20. The Memorandum of Understanding nowhere states that the medical degree would be given by the Rangsit University to those students, who have undergone their medical education in the Off-shore Campus of the Deemed University.

21. The learned Senior Counsel for the Deemed University contended that the permission to appear for the Screening Test was denied to the students only on account of the report given by the Indian Embassy of Thailand. According to the learned Senior Counsel the Indian Embassy has only verified as to whether the Deemed University was recognized in Thailand. However the Embassy has not verified as to whether Rangsit University was a recognized one, which is a material factor in so far as the present dispute is concerned.

22. The contention of the learned Senior counsel for the University with respect to the report submitted by the Indian Embassy has no force. We are not concerned with the medical degree awarded by the Rangsit University. The status of Rangsit University is not an issue in this writ appeal. The question is, as to whether the Deemed University having their Off-shore campus in Thailand is a recognised University in Thailand so as to enable their students to register their name in the Medical Council of Thailand or to practise medicine in Thailand. Therefore it was not the look out of the Indian Embassy to verify as to whether Rangsit University was a recognized University. The only concern is as to whether Vinayaka Mission University is a recognized University in Thailand, which would enable the students of the said University to register and practise in Thailand, which is a condition precedent for appearing for the Screening Test in India. Therefore there was nothing wrong in the Indian Embassy collecting information about the status of the Deemed University in Thailand. Their enquiry confirmed the fact that Deemed University was not recognized in Thailand and as such the students, who have undergone their course in the Off-shore

Campus of the said University are not entitled to register their Medical Degree before the Medical Council of the said Country or to practise the profession in Thailand.

23. When the writ appeal came up for admission, we have indicated to the learned Senior Counsel for the Deemed University that it would be in their interest to produce documents issued by the Government of Thailand or Medical Council of Thailand confirming that the said University is a recognized University in Thailand. However no such documents were produced before us.

24. When the writ appeal was taken up for final hearing, we repeatedly asked the learned Senior Counsel for the University as well as the learned Senior Counsel appearing for the students, to resolve the dispute by producing the certificate from the Medical Council of Thailand or the Government of Thailand to confirm the fact as to whether Deemed University has got recognition in the said Country. However the learned Senior Counsel for the Deemed University fairly admitted that it is not possible to obtain any such certificate from the Medical Council of Thailand or the Government of Thailand.

25. The Rangsit University with whom the Memorandum of Understanding was entered into by the Deemed University is admittedly a private University like the first respondent. Their power to permit the Deemed University to establish and deliver Medical, Dental, Technical and Allied Programs in connection with the said University itself is a disputed question. There is nothing on record to demonstrate that the Government of Thailand or the Medical Council of that Country permitted Rangsit University to give approval for Off-shore training with an express statement that degrees of such institutions would be respected and they would be permitted to enroll before the Medical Council of Thailand.

26. The "No Objection Certificate" issued by the Rangsit University or the Memorandum of Understanding entered into between these two Universities are not substitutes for permission of the Government of Thailand for opening Off-Shore Campus in Thailand.

27. Rangsit University can award degree for those students, who have undergone studies in their campus or under their recognized institutions. Admittedly Rangsit University has not agreed to give Medical degree to those students who have studied in the Off-shore Campus of Vinayaka Mission University at Bangkok. Therefore Rangsit University cannot be heard to say that the permission granted by the said University would enable the Deemed University to award medical degree. It is for the Medical Council of Thailand or the Government of Thailand to confirm the position. However the fact remains that there was no recognition of the medical course run by the Deemed University in their Campus at Bangkok either from the Government of Thailand or from the Medical Council of Thailand.

28. Though the Deemed University has not produced even a scrap of paper before the Medical Council of India or before the appellant to justify their contention regarding recognition in Thailand, the National Board has taken steps through the Indian Embassy at Bangkok to verify the factual position. The letter received from the Indian Embassy by the National Board reads thus:-

"25th September, 2009 From : Abhijit Chakraverty, Counsellor (Info. & Cul) Embassy of India, Bangkok To : Dr.Bipin Batra Dear Dr.Batra, Please refer to your email below regarding recognition status of Vinayaka Mission University Offshore Campus Bangkok.

Position has been checked with the Medical Council of Thailand and they have informed that as per their records the Vinayaka Mission University is not recognized by them.

Regards, Abhijit Chakraverty, Counsellor (Info. & Cul)"

29. The Central Government exercising jurisdiction under Section 3 of the University Grants Commission Act in the matter of declaration of Deemed University status or granting permission for starting an Off-shore campus, has no authority to say that the Medical Council Regulations are not applicable to such of those institutions which would come under the ambit of Deemed University. In fact, the notification dated 10 October, 2006 very categorically states that all norms of Medical Council of India would continue to be in force and it should be complied with. Similarly it contains a statement that the laws of the land of Thailand would be applicable. The laws of the land of Thailand provides for recognition of medical course in Thailand. There is a Medical Council functioning in the said Country. The Deemed University has no case that they were recognized by the Medical Council of Thailand.

30. The Screening Test Regulations, 2002 is very specific when it provides that the candidate, who wanted to appear for the Screening Test, should possess primary medical qualification which is a recognized qualification for enrolment as medical practitioner in the Country in which the institution awarding the said qualification is situated. Therefore unless and until the students satisfy the eligibility criteria they cannot be heard to say that they should be permitted to appear for the Screening Test on the basis of the notification issued by the Government of India permitting the Deemed university to open their Off-shore campus at Bangkok.

31. The National Board was fully justified in their contention that unless and until the Deemed University produces a certificate from the Government of Thailand or Medical Council of Thailand certifying that the degree awarded by the Off-shore campus of the Deemed University would enable the students to enroll as medical practitioner in Thailand there is no question of allowing the students to take the Screening Test.

32. According to the learned counsel for the National Board, the entire cause of action has arisen at Delhi and as such the Court at Delhi alone has got jurisdiction. Even according to the Deemed University, no part of the cause of action has arisen at Chennai so as to enable them to file the writ petition before this Court. Merely because the Deemed University is situated within the jurisdiction of the High Court at Madras, they cannot file the writ petition before this Court. We see considerable force in the argument of the learned counsel with regard to jurisdiction. However we are not rejecting the case of the Deemed University on the ground of jurisdiction, in view of the fact that very issue considered by the learned Single Judge was on merits.

33. The learned Single Judge has allowed the writ petition mainly on two grounds. According to the learned Single Judge the name of the Rangsit University was found in the World Directory of Medical Schools. Similarly the name of the Deemed University is found mentioned in the Regional Directory of Training Institutions published by the World Health Organization. The other reason which weighed with the learned Judge pertains to the initial direction of the National Board to produce the Embassy attested copy of the certificates of candidates.

34. There is no dispute that Rangsit University is a recognized University in Thailand. Vinayaka Mission University is a recognized University in India enabling them to enter their name in the Regional Directory of Training Institutions published by the World Health Organization. In fact the publication relied on by the Deemed University was of the year, 2007. However the fact remains that the four and half years MBBS course commenced way back in the year, 2005.

35. The eligibility certificate issued by the Medical Council of India contains a clear stipulation that mere issue of the certificate would not enable the candidate to appear for the Screening Test. In fact, the Screening Test Regulations itself were re-produced in the eligibility certificate. Therefore no reliance could be placed on such eligibility certificate to claim as a matter of right to appear for the Screening Test. The notification issued by the Government of India also will not come to the rescue of the students of the Deemed University. The Government of India notification was very specific that the other norms also should be satisfied by the Deemed University, which includes the eligibility criteria for appearing for the Screening Test in India. Therefore the notification dated 10 October, 2006 has to be read in the light of the Medical Council of India Regulations, Screening Test Regulations and other statutory notifications. The permission to start an Off-shore campus at Bangkok was admittedly subject to the laws of the Government of Thailand. Therefore the Deemed University was expected to get non-objection from the Government of Thailand and recognition from the Medical Council of that Country. Rangsit University has no authority to grant such a recognition. Therefore any kind of evidence produced by the Deemed University to show that Rangsit University has got recognition in Thailand or that they have been permitted by the Rangsit University to establish the Off-shore Campus in Thailand will not come to the rescue of the Deemed University.

36. The learned Senior Counsel for the Deemed University during the course of his arguments submitted that the twenty one students have already undergone the Screening Test and out of which one student had passed the examination. The very fact that one out of twenty one students alone had passed the Screening Test is a clear indication about the quality of education, undergone in the Off-shore campus of the Deemed University.

37. The Deemed University cannot claim any kind of equity on the basis of the interim order. When there are no materials on record to show that the Deemed University has got the approval/recognition issued by the Medical Council of Thailand or permission granted by the Government of Thailand, there was no question of allowing the students to appear for the Screening Test. The students were expected to satisfy the essential conditions of the Screening Test Regulations for the purpose of their participation in the Screening Test. The Medical Council of India and the National Board are statutory authorities vested with statutory powers to look into the

issue regarding the essential qualification and the requirements for permitting those students who have undergone education in the Off-shore campus for registration as medical practitioners in India and for the said purpose to appear for the Screening Test. The statutory authorities have found from proved materials viz., the report of the Indian Embassy, that Vinayaka Mission University was not a recognized University in Thailand. It was only in such circumstances permission was denied to the students to sit for the Screening Test. When there was no possibility to give the ultimate relief in the writ petition, there was no question of granting the interim relief.

38. While considering the application for interim relief in educational matters, the Court has to see as to whether such relief could be granted ultimately. In the case on hand, the interim relief and the final relief are one and the same. It is not as if the Screening Test scheduled in the month of September, 2009 was the last Screening Test or final examination. The National Board is conducting the Screening Test once in every six months. Therefore, even if the students were not permitted to sit for September, 2009 examination, they could appear for the subsequent examination, in case, on the basis of materials, the Court comes to the conclusion that they are entitled to appear for the Screening Test. The interim direction was issued without hearing the National Board or the Medical Council of India. The practice of filing writ petitions at the last moment to obtain interim order without notice to the statutory authorities should be deprecated. Because of such make-believe urgency, the Court will be denied of the benefit of considering the version of the educational authorities. Therefore each case has to be considered on its own merits. In case the Court is of the view that there is no urgency in the matter and the petitioners have come up during the eleventh hour, the Court would be justified in denying the interim relief to appear for the examination.

39. In *Guru Nanak Dev University v. Parminder Kr. Bansal*, (1993) 4 SCC 401, the Supreme Court deprecated the practice of administration of interlocutory remedies, guided by sympathy. The observation reads thus:-

"7.We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself."

40. In *Central Board of Secondary Education v. Nikhil Gulati*, (1998) 3 SCC 5, the Supreme Court once again deprecated the practice of permitting ineligible students to appear for University Examination on the basis of interim orders. The observation reads thus:-

"1. Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught

the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders, for it puts the Rule of Law to a mockery, and promotes rather the Rule of Man ."

41. In *Regional Officer, CBSE v. Sheena Peethambaran*, (2003) 7 SCC 719, the Supreme Court considered the earlier decisions in the matter of permitting the students to pursue their studies and to appear for the examination under the interim orders passed in the writ petitions. The relevant paragraph reads thus:-

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions. A few decisions on the point may be perused. In *C.B.S.E. v. P. Sunil Kumar* the institutions whose students were permitted to undertake the examination of the Central Board of Secondary Education were not affiliated to the Board, hence the students were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim orders granted by the Court in contravention of the rules and regulations of the Board. The High Court considering the matter sympathetically had not interfered, but this Court observed thus:

But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students. The order of the High Court was set aside. Another decision reported in *Guru Nanak Dev University v. Parminder Kr. Bansal*, a three-Judge Bench decision, was relied upon in the case of *Sunil Kumar*¹. A passage from the abovenoted decision was also quoted therein which reads as follows:

We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial

discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the *prima facie* legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions.

42. While considering an issue like this the factors which actually weighed with the Government of India and the Medical Council of India to introduce the Screening Test, assumes significance. It was only on the basis of the report submitted by the Embassy of India in Moscow that there was a decline in the academic standards of Russian educational institutions and manifest erosion of ethics which made it impossible to be sure that undeserving students would not complete their medical education from these institutions and that Russian Ministry of Health had continued to give admission to students sponsored through private agencies in India, that the Government of India and the Medical Council of India initiated action to introduce strict regulatory measures. The report of the Embassy was considered at the highest level of the Government of India and the Medical Council and accordingly a bill was introduced in both the Houses of Parliament and thereby Section 13 of the Indian Medical Council Act, 1956 was amended. The Amended Act, which contains a provision regarding the conduct of Screening Test was introduced with effect from 15 March, 2002. Therefore, Screening Test Regulations were introduced with a definite purpose. The statutory body should be convinced that the students, who approaches the National Board to take part in the Screening Test had the required Medical Education in the Foreign Country. The Medical Council of India has no control over the medical institutions in Foreign Countries. The Medical Council is also not sure as to whether the Off-Shore campus of the Indian Universities abroad or the Foreign Universities have got all the infrastructural facilities for conducting the Medical Education. Similarly, there is no mechanism to cross check as to whether the students, who apply for registration before the Medical Council of India and for that purpose to appear for the Screening Test, had the required training on the institution where they have undergone medical education in the Foreign Country, had the necessary facilities. It was only in such circumstances, a mandatory provision was included in the Screening Test Regulations that such of the foreign educated students should demonstrate that they had obtained a degree from a recognized institution abroad and with such degree they would be able to register their name with the Medical Council of that Country.

43. The nature of education undergone by these twenty one students in the Off-shore Campus at Thailand is a matter within the knowledge of the concerned students. Rangsit University has no control over the Off-shore campus of the Deemed University. Therefore any recognition given to the Rangsit University by the Medical Council of Thailand or permission given by the Government of Thailand to them will not give a right to the Deemed University to get the degree issued by them, registered by the Medical Council of Thailand. Therefore the primary responsibility is on the students or the Deemed University to produce acceptable materials before the Medical Council of

India and the appellant Board to demonstrate that with the degree awarded by the Off-Shore Campus of the Deemed University, the students could register their name before the Medical Council of Thailand and that they would be in a position to practise in the said Country.

44. The views expressed by the Medical Council of India and the appellant Board cannot be brushed aside so lightly. In case, the Medical Council of India Regulations are taken in a lighter way, it would erode the standard of the very medical profession. The registration with the Medical Council of India and the inclusion of the name in the medical register would enable the medical professionals to practice the profession in India. Therefore in case those who have not undergone studies as per the prescribed syllabus are permitted to practise in India, the ultimate sufferer would be the general public. Therefore it was only in public interest the Screening Test was introduced.

45. The importance of Medical Council of India Regulations was underlined by the Supreme Court in *Maharashtra University of Health Sciences v. Paryani Mukesh Jawaharlal*, {2007(8) SCALE 529 = (2007) 10 SCC 201}, thus:

"15. MCI has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. The regulations framed by the MCI with the previous sanction of the Central Government, in regard to any of the matters referred to in Section 33 of the Indian Medical Council Act, 1956, will have statutory force and are mandatory. Universities must necessarily be guided by the MCI Regulations. Any regulations made by the Universities which are inconsistent with the MCI Regulations, or which dilute the criteria laid down by MCI will not be valid to the extent of inconsistency or dilution."

46. In *Sanjeev Gupta v. Union of India*, (2005) 1 SCC 45, the Supreme Court observed that a person who is not duly qualified as prescribed by Medical Council of India cannot be permitted to involve himself in public health care and play with the lives of human beings. The observation reads thus:-

"48. MCI is the expert body which can lay down the criteria for grant of permanent registration to a person to practise medicine and involving himself in the patient care and management. Otherwise also we are not inclined to permit the petitioners to practise medicine overriding the provisions of the Act as the Court has to take into consideration the interest of the public at large as well. A person who is not duly qualified as prescribed by MCI cannot be permitted to involve himself in public health care and play with the lives of human beings. It is not for this Court to decide as to who is duly qualified to practise medicine. MCI being the expert body is the best judge to do so."

47. Education matters like the present one requires consideration by the statutory authorities. It is not within the province of courts to sit in the arm chair of educational authorities and to exercise their statutory powers. In case the Court is of the view that the decision taken by the statutory authority was wrong, the authority should be directed to look into the matter afresh. There is no question of granting positive directions in such matters. It is true that in exceptional cases, it would

be permissible for the Courts to grant positive reliefs. The present case is not such an exceptional one justifying the grant of a positive direction.

48. The Supreme Court in *Union of India v. Era Educational Trust*, (2000) 5 SCC 57, indicated that in matters regarding education, the attempt of the Courts should be to direct the authority to re-consider the decision instead of granting a positive relief. The relevant observation reads thus:-

"7. Apart from Order XXXIX even with regard to medical education, there are various decisions of this Court laying down the principle that normally the court should not interfere and even if interference is required in a case of an unsustainable order, the authority should be directed to reconsider the case on the norms prescribed under the Act and/or the Rules. In *Shivaji University v. Bharti Vidyapeeth* after considering the order passed by the University, the Court directed the University to reconsider the question in the light of the observations made in the judgment. In a similar set of circumstances, in *Medical Council of India, New Delhi v. State of H.P.* this Court on 16-2-2000 observed that since the refusal was based on deficiencies for running a medical college, it would have been appropriate for the High Court to have remitted the matter to the Medical Council of India or the Union of India for reconsideration, even if it was of the opinion that the order of the Medical Council of India deserved to be set aside and the Court ought not to have issued a writ of mandamus directing grant of permission."

49. In *All India Council for Technical Education v. Surinder Kumar Dhawan*, {2009 (4) SCALE 596 = (2009) 11 SCC 726}, the Supreme Court underlined the role of expert bodies in the field of education. It reads thus:-

"17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off."

50. In *Yash Ahuja v. Medical Council of India*, {2009(12) SCALE 687 = (2009) 10 SCC 313} the issue before the Supreme Court was regarding the challenge made to Section 13(4A) of the Indian Medical Council Act, 1956 and the Screening Test Regulations, 2002. While considering the Regulations, the Supreme Court made a reference about the background facts which lead to the introduction of Section 13(4A) and Screening Test Regulations. The Observation reads thus:-

"6. Over a period of time, it was noticed that a large number of private agencies sponsored Indian students for medical studies in institutions outside India for commercial considerations. Such students also included the students who failed to fulfil the minimum eligibility requirements for admission to medical courses in India. Serious aberrations were noticed in the standards of medical education available in some of the foreign countries which were not on a par with the standards of medical education available in India.

7. Due to lack of uniformity in the standards of medical education in various foreign countries, it was decided to make a provision in the Act to enable MCI to conduct a screening test in order to satisfy itself with regard to the adequacy of knowledge and skills acquired by citizens of India who obtain medical qualifications from universities or medical institutions outside India before they are granted registration to practise medicine in India.

8. Accordingly the Act was amended by the Indian Medical Council (Amendment) Act, 2001 and new Section 13(4-A) was inserted, which requires that 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 a 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 purpose of this Act for that person.

.....

73. However, over a period of time, it had come to the notice of the legislature that a large number of private agencies sponsored students for medical studies in institutions outside India for commercial consideration. It was noticed that such students also included those students, who did not fulfil the minimum eligibility requirements for admission to medical courses in India. Serious aberrations were noticed in the standard of medical education in some of the foreign countries, which were not on a par with the standards of medical education available in India. These were the defects and/or mischiefs noticed for which no provision was made either in Section 12 or sub-sections (3) and (4) of Section 13 of the Act.

74. In the year 1956, when the Indian Medical Council Act was enacted, it must not have been contemplated by anyone that a large number of private agencies would sponsor students for medical studies in institutions outside India for commercial considerations including those students who were not fulfilling the minimum eligibility requirements for admission to medical courses in India, etc. It was, therefore, felt necessary by Parliament to make a provision to enable the Council to conduct a screening test. This is the remedy that sub-section (4-A) has provided. This remedy is prescribed to satisfy MCI with regard to the adequacy of knowledge and skills acquired by citizens of India, who obtain medical qualifications from universities or medical institutions outside India and to ensure that those students have secured the standards of medical education in the foreign countries, which are on a par with standards of medical education in India.

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

51. The fact that the Deemed University was not approved by the Medical Council of Thailand, is evident by the fact that in spite of granting sufficient opportunity to the Deemed University, the learned Senior Counsel was not in a position to produce any materials, to support their claim of recognition.

52. Statutory provisions made in public interest in the field of education should be interpreted very strictly and any leniency shown by the Courts would adversely affect the medical education. In fact, Courts have no expertise in matters like this. When it comes to education, the views of the statutory bodies should be given prominence. Neither the medical Council of India nor the National Board has anything against the Deemed University. They only wanted the mandatory regulations to be complied with for the purpose of enabling the students to qualify for the Screening Test in India.

53. The learned counsel for the appellant by placing reliance on the report dated 19 October, 2009 of the Committee for review of existing institutions deemed to be Universities, submitted that Deemed University involved in this writ appeal was found to be an ill-equipped University by the Expert Team, as they have failed to satisfy most of the criteria for the Deemed University status. However, we are not inclined to consider such issues at present as it is beyond the scope of the writ appeal.

54. Therefore on a careful consideration of the entire matter we are of the view that the degree awarded by the Off-Shore Campus of the Vinayaka Mission University at Bangkok was not a primary medical qualification for enrolment as medical practitioners.

55. In the result, the order dated 31 March, 2010 in W.P.No.19658 of 2009 is set aside. The writ appeal is allowed. Consequently, the connected Mps are closed. No costs.

Tr/ To

1. The Assistant Director National Board of Examinations Ministry of Health and Family Welfare Government of India, Ansari Nagar New Delhi-110 029.
2. The Member Secretary Medical Council of India Aiwan E Galib Marg, Kola Road New Delhi.
3. The Secretary to Government The Union of India Ministry of Human Resources Development Department of Higher Education New Delhi