

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.5343 OF 2018
WITH
INTERIM APPLICATION NO.77 OF 2021**

Anita Kishanrao Videkar ... Petitioner

Versus

Union of India through its
Secretary And Others

... Respondents

ALONG WITH**WRIT PETITION NO.3087 OF 2018
WITH
INTERIM APPLICATION NO.71 OF 2021
WITH
INTERIM APPLICATION NO.72 OF 2021**

Dr. Rajiv Vasant Kulkarni
And Others

... Petitioners

Versus

Union of India through
Secretary Ministry of Health And Others

... Respondents

ALONG WITH**WRIT PETITION NO.4964 OF 2018
WITH
INTERIM APPLICATION NO.82 OF 2021**

Dr. Archana Shaunakbhai Patel

... Petitioner

Versus

Union of India through Secretary Ministry
of Health And Others

... Respondents

ALONG WITH**WRIT PETITION NO.4787 OF 2018
WITH
INTERIM APPLICATION NO.79 OF 2021**

Dr. Shriram Nikhil Govardhan

... Petitioner

Versus

Union of India through
Secretary And Others ... Respondents

ALONG WITH
WRIT PETITION (ST.) NO.14966 OF 2018
WITH
INTERIM APPLICATION (ST.) NO.97590 OF 2021

Dr. Sayali Shankar Tidke ... Petitioner
Versus

Union of India through
Secretary And Others ... Respondents

ALONG WITH
WRIT PETITION NO.4953 OF 2018
WITH
INTERIM APPLICATION NO.80 OF 2021

Nupur Kunwarsingh Bhagat ... Petitioner
Versus

Union of India through
Secretary Ministry of Health
And Others ... Respondents

ALONG WITH
WRIT PETITION NO.5344 OF 2018
WITH
INTERIM APPLICATION NO.78 OF 2021

Keyur Raghuvendra Chakurwar ... Petitioner
Versus

Union of India through its
Secretary And Others ... Respondents

ALONG WITH
WRIT PETITION NO.4758 OF 2018
WITH
INTERIM APPLICATION NO.73 OF 2021

Dr. Prashant Narsingarao Biradar ... Petitioner
Versus

Union of India through
Secretary Ministry of Health
And Others ... Respondents

ALONG WITH

**WRIT PETITION NO.4963 OF 2018
WITH
INTERIM APPLICATION NO.81 OF 2021**

Dr. Jigneshkumar Kantilal Gadhia ... Petitioner
Versus
Union of India through Secretary Ministry
of Health And Others ... Respondents

**ALONG WITH
WRIT PETITION NO.5233 OF 2018
WITH
INTERIM APPLICATION NO.83 OF 2021**

Dr. Gaurav Chhabra ... Petitioner
Versus
Union of India through Secretary And Others ... Respondents

**ALONG WITH
WRIT PETITION NO.5352 OF 2018
WITH
INTERIM APPLICATION NO.342 OF 2021**

Dr. Gaurav Arun Kale And Others ... Petitioners
Versus
Union of India through its
Secretary And Others ... Respondents

....

Mr. V.M. Thorat, for the Petitioners.

Mr. Rui Rodrigues, a/w. Mr. Akash Kotecha, for Respondent No.1-Union of India.

Mr. Narayan Sahu, a/w. Dnyaneshwar Jadhav a/w Saloni Vyas, i/b. Legasis Partners, for College of Physicians and Surgeons.

Mr. Abhishek Deshmukh, a/w, Mr. Sanjiv Sawant, for the Applicant in Interim Application No.342 of 2021.

Smt. S.S. Bhende, AGP and Smt. P.N. Diwan, AGP for the State.

Mr. Ganesh Gole for Respondent Nos.2 and 3.

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**CORAM : S.C. GUPTA AND
SURENDRA P. TAVADE, JJ.**

DATE : 24 FEBRUARY 2021

Oral Judgement : (Per S.C. Gupta, J.)

. This group of petitions challenges action on the part of the Respondent authorities, particularly, National Board of Examination (Respondent No.3), in holding that the Petitioners were not eligible to pursue Secondary Diplomate of National Board (“DNB”) course on the basis of qualifying diploma courses completed by the Petitioners.

2. The Petitioners in these petitions are all holders of MBBS Degree from different medical colleges. After obtaining such degree, they proceeded to undertake and complete post graduate diploma courses in medicine or surgery, as the case may be, conducted by College of Physicians and Surgeons, Bombay. These diploma courses, conducted by the College of Physicians and Surgeons, have since long been recognized as intermediate post graduate qualifications. A pre-constitution law, Indian Medical Degrees Act, 1916, which had the assent of Governor General of India on 16 March 2016, recognized diplomas awarded by the College of Physicians and Surgeons as a recognized qualification, along with three other categories of organizations/colleges, for prosecuting Western Medical Science including Allopathic Medicine. By a stroke of luck, the specifics of which we need not go into for the purpose of these petitions, suddenly by a Notification issued on 2 December 2009 by the Union Government, various post graduate diploma courses conducted by the College of Physicians and Surgeons came to be de-recognized. This

state of affairs continued till about 17 December 2017. By a Notification dated 17 January 2017, issued by Union Government, after consulting Medical Council of India, recognition of individual post graduate diploma courses conducted by the College of Physicians and Surgeons came to be restored through an amendment to the First Schedule of Medical Council of India Act. Various individual diplomas granted by the College of Physicians and Surgeons, ever since December 2009, came to be included once again as recognized medical qualifications. (In case of some of these diplomas, the recognition was for diplomas conferred after March 2012.) The individual Petitioners before us had, on the basis of diplomas held by them through College of Physicians and Surgeons, applied for admission to Secondary DNB course, which is a post graduate course of two years and which requires as a qualifying condition for admission holding of a recognised post graduate diploma. Based on the recognition granted by Notification of 17 January 2017, the Petitioners were considered eligible for appearing at a Common Entrance Test (“CET”) for admission to Secondary DNB course. Even their results at CET were declared accordingly. So far so good. Subsequent to their having cleared CET, Union of India proceeded to issue yet another notification, Notification dated 22 January 2018 (Gazetted on 12 February 2018), once again de-recognising the diplomas awarded by the College of Physicians and Surgeons. As a result of this last Notification, Respondent No.3-Board refused to permit the Petitioners to undertake the Secondary DNB course any further. This led to the Petitioners filing the present group of petitions.

3. By a recent order, passed on 10 April 2018, a Division Bench

of this court directed the Respondents to permit the Petitioners to go ahead with the Secondary DNB course as per the original Notification dated 17 October 2017. No doubt, the Division Bench made it clear that the fate of the course undertaken by the Petitioners would be subject to the results of the petitions. The Petitioners, in any event, went ahead and participated in the course, some of them having already completed the course and even procured Secondary DNB qualification based on their individual results. Some have even enrolled and registered themselves as Practitioners with DNB qualification and even started practicing accordingly. In case of a few Petitioners, who could not clear the Secondary DNB examination in first attempt, they were, however, held to be un-qualified for appearing at the re-examination, on account of derecognition of their diplomas awarded by the College of Physicians and Surgeons on 22 January 2018, purportedly on the ground that the present petitions were not finally decided by this court. That is where the matter stands today as we take up these petitions for final hearing.

4. The foregoing narration makes it clear that at the time of the Petitioners' appearance at the CET for undertaking Secondary DNB course conducted by Respondent No.3, they had the requisite qualification for undertaking the course. Individual diplomas awarded to them by College of Physicians and Surgeons were recognized under Medical Council of India Act, 1916. Having appeared at the CET and cleared the same, the Petitioners were admitted to Secondary DNB course. The Petitioners have all undergone and completed the entire two years of instruction for the course. Many of them have not only cleared the course and obtained the qualification of Secondary DNB, but have even started practicing with

such qualification. On these facts, though their original pursuit of Secondary DNB course was permitted subject to a final decision of these petitions, it would be clearly unjust to now hold them to be ineligible to be admitted to the course. After all, the Petitioners have not only been duly admitted to the course after clearing the requisite CET, but even successfully completed the entire two years of instruction of the course, at the end of which many have even been duly assessed for their performance at the final examination and on that basis, even awarded the prestigious qualification of Secondary DNB course. It would be, in the premises, too late in the day for the Petitioners to now be told that since the recognition of their qualifying course was retrospectively withdrawn by the Union Government, their entire fellowship of two years and successful prosecution of the course would be brought to a naught.

5. It is another matter that for admissions for the academic year 2018-19 onward, diplomas awarded by the College of Physicians and Surgeons may not be recognized as an acceptable qualification for admission to Secondary DNB course. In fact, the Petitioners do not challenge the de-recognition of diplomas awarded by the College of Physicians and Surgeons by the Notification of 22 January 2018. As far as the present Petitioners are concerned, on the date they appeared for CET, they were qualified to be admitted to the Secondary DNB Course. They cleared CET and got themselves admitted to the course and have even, as we have noted, successfully pursued the course. As far as they are concerned, it is impermissible to now derecognize the qualification of Secondary DNB course awarded to them or prevent them from appearing at the final examination of Secondary DNB course or withhold their

results.

6. The Supreme Court, in the matter of **Suresh Pal Vs. State of Haryana**¹, was concerned with a particular educational course undertaken by the petitioners before it. When the petitioners were admitted to the course, the course was recognized; somewhere along the line, during the time they were prosecuting the course, the course came to be de-recognized. The Supreme Court held that since, when the petitioners were admitted to the course, it had the requisite recognition, it would be unjust for them to be told that their course had lost recognition. The facts of our case stand on an even better footing inasmuch as, in our case, we are not concerned with the recognition to the course now undertaken by the Petitioners; we are concerned with their eligibility qualification to undertake the course. As we have noted above, they did meet the eligibility criteria, when they appeared for CET for undergoing the present course. Not only that, but they were duly declared as meritorious candidates and admitted to the course and have proceeded to even complete the course. It would be all the more unjust in such a case for the present Petitioners to be told that despite successful pursuit of the whole course, even with its successful completion in many cases, the whole exercise would be brought to a naught, because the Government has shifted its stand on the eligibility criteria midway. We are afraid that would be clearly impermissible.

7. Accordingly, we make Rule absolute absolute and allow all these petitions. Respondent No.3-Board is directed to hold and treat the Petitioners as individually eligible to pursue Secondary DNB course on the

1 (1987) 2 Supreme Court Cases 445

basis of qualifying diplomas held by them from the College of Physicians and Surgeons of Bombay. The individual qualifications of Secondary DNB course held by the individual Petitioners are accordingly entitled to be treated as qualifications duly obtained. Such of the Petitioners, whose results have been withheld, shall be entitled for declaration of their individual results and be allowed to prosecute either further studies or practice medicine on that basis. Those of the Petitioners, who have for any reason failed in their Secondary DNB examination, shall be entitled to reappear at the examination and declaration of their results at such re-examination. Since appearance at the practical examination of those of the Petitioners, who have given theory papers of Secondary DNB course, depends on their results at the theory papers, they would be entitled to appear for their practical examination accordingly. Respondent No.3 to forthwith declare the theory results of those candidates.

8. All the petitions are disposed in the above terms.

9. In view of disposal of the petitions, the respective Interim Applications, taken out in the respective petitions, do not survive and are also disposed of.

(SURENDRA P. TAVADE, J)

(S.C. GUPTE, J.)