

**Court No. - 17**

1. **Case :-** MISC. SINGLE No. - 18831 of 2018  
**Petitioner :-** Arpita Verma  
**Respondent :-** State Of U.P.Throu,Prin.Secy.Ministry Of Medical Edu.& Ors.  
**Counsel for Petitioner :-** Sri Shailendra Srivastava,Aastha Mishra  
**Counsel for Respondent :-** C.S.C.,Gyanendra Kumar Srivastav,Sanjay Bhasin,Shashank Bhasin
2. **Case :-** MISC. SINGLE No. - 19523 of 2018  
**Petitioner :-** Anurag Jain  
**Respondent :-** State Of U.P Thru. Prin. Secy. Medical Edu. & Training & Ors  
**Counsel for Petitioner :-** Amrendra Nath Tripathi,Ganesh Nath Mishra,Ramesh Pandey  
**Counsel for Respondent :-** C.S.C.,Devendra Mohan Shukla,Gyanendra Kumar Srivastav,Sanjay Bhasin
3. **Case :-** MISC. SINGLE No. - 20060 of 2018  
**Petitioner :-** Mohd. Danish & Ors.  
**Respondent :-** State Of Up Thru Prin Secy Medical Education & Training &Ors  
**Counsel for Petitioner :-** Amrendra Nath Tripathi,Ganesh Nath Mishra  
**Counsel for Respondent :-** C.S.C.,Gyanendra Kumar Srivastav,Sanjay Bhasin,Shashank Bhasin

**AND**

4. **Case :-** MISC. SINGLE No. - 20391 of 2018  
**Petitioner :-** Anamika Jain  
**Respondent :-** State Of Up Thru.Prin.Secy.Min.Of Medical Edu.&Training &Ors  
**Counsel for Petitioner :-** Ganesh Nath Mishra,Amrendra Nath Tripathi  
**Counsel for Respondent :-** C.S.C.,Gyanendra Kumar Srivastav,Sanjay Bhasin,Shashank Bhasin

**Hon'ble Vivek Chaudhary,J.**

1. Heard Sri Amrendra Nath Tripathi, assisted by Sri Ganesh Nath Mishra, Sri Shailendra Srivastava, assisted by Aastha Mishra, learned counsel for petitioners, Sri Sanjay Bhasin learned counsel for DGME, Sri Gyanendra Kumar Srivastava learned counsel for MCI, Sri Shashank Bhasin for CBSE and the learned standing counsel.

2. By the present bunch of writ petitions the petitioners have challenged the eligibility condition No.(vii) and (viii) of the Notification of National Eligibility Entrance Test (NEET), 2018 which reads as follows:-

"(vii) Provided that two years of regular and continuous study of Physics, Chemistry, Biology/Bio-technology taken together shall be required at 10+2 level for all the candidates.

(viii) Candidates who have passed 10+2 from Open Schools or as Private candidates shall not be eligible to appear for National Eligibility-cum-Entrance Test-UG. Furthermore, study of Biology/Bio-technology as an Additional Subject at 10+2 level also shall not be permissible."

3. The admitted facts of the case are that the petitioners completed their Intermediate as private students from the Uttar Pradesh Board with subjects Physics, Chemistry, Mathematics and English. Thereafter in the next year they appeared as private students with Biology subject and cleared their Biology paper.

4. Submissions of learned counsel for petitioners is that case of petitioners is covered by Regulation 4 (2) (b) of 1997 Regulations while submission of learned counsels for respondents is that case of petitioners would be covered by Regulation 4 (2) (a). Further submission of learned counsels for respondents is that even presuming that the petitioners are covered by Regulation 4 (2) (b), the same shall also be treated to be amended by amendment made in Regulation 4 (2) (a). For convenience, Regulation 4 (2) (a) and (b) as existed prior to amendment are as follows:-

**"4. Admission to the Medical Course Eligibility Criteria:**

No candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:-

- (1) He/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS Course.
- (2) He/she has passed qualifying examination as under:

- (a) **The higher secondary examination or the Indian School Certificate Examination** which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges.

or

- (b) **The Intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject.**

or

... .. " "

5. The aforesaid Regulation was amended by MCI by Notification dated 22.7.2018 and by Clause 5 of said notification following amendment in Regulation 4 (2) (a) was made:-

"Provided that two years of regular and continuous study of Physics, Chemistry, Biology/Biotechnology taken together shall be required at 10+2 level for all the candidates. Candidates who have passed 10+2 from Open Schools or as Private candidates shall not be eligible to appear for National Eligibility-cum-Entrance Test. Furthermore, study of Biology/Biotechnology as an Additional Subject at 10+2 level also shall not permissible."

6. No amendment was made in Sub-clause 4 (2) (b).
7. The admitted facts of the case are that the petitioners completed their Intermediate as private students from the Uttar Pradesh Board with subjects Physics, Chemistry, Mathematics and English. Thereafter in

the next year they appeared as private students with Biology subject and they cleared their Biology paper.

8. A dispute arose with regard to applicability and interpretation of Clause 4 (2) (a) and 4 (2) (b) which was considered by a Division Bench in Writ-C No.46218 of 2013 (Prateek Singh Vs. Union of India), decided on 4.4.2017. The facts of the said case were that the petitioner had appeared at the Intermediate Examination conducted by the Board of High School and Intermediate Education, Uttar Pradesh in 2003 with General Hindi, English, Mathematics, Physics and Chemistry but the petitioner also appeared at the 2004 Intermediate Examination conducted by the Board in Biology subject in accordance with Regulation 17(2) contained in Chapter XII of the Regulations framed under the provisions of the U.P. Intermediate Education Act, 1921. Thus, the petitioner in the said case was similarly placed as the petitioner herein. This Court after a detailed discussion found that Regulation 4 (2) (a) are with regard to CBSE and ICSE Boards while Regulation 4 (2) (b) are applicable on the State Boards. and Private students thereof. Relevant portion of the judgment of Pratik Singh is as follows:-

"The petitioner has been denied the Eligibility Certificate for the reason that the petitioner does not satisfy the requirement contained in Regulation 4 (2) (a) of the 1997 Regulations for taking admission in the MBBS Course. Regulation 4 deals with admission to the Medical Course. Clause (1) provides that no candidate shall be allowed to be admitted in the first year MBBS Course until the candidate has completed the age of 17 years on or before 31 December of the year of admission in the MBBS Course. Clause (2) provides that the candidate should have passed the qualifying examination enumerated in clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (f). Clause (a) refers to Higher Secondary Examination or the Indian School Certificate Examination. It provides that the candidate should have passed either of the aforesaid examinations after a period of 12 years study, but the last two years of study should comprise Physics, Chemistry, Biology and Mathematics subjects or any other elective subjects with English. Clause (b) refers to Intermediate Examination in Science. It provides that the

candidate should have passed the Intermediate Examination in Science with Physics, Chemistry and Biology, which shall include a practical test in these subjects and also English as a compulsory subject. Clauses (c) or (d) or (e) or (f) refer to other examinations. The relevant alternative clauses are (a) and (b) since the Medical Council of India is relying upon clause (a), while the petitioner is relying upon clause (b).

Clause (a) and (b) are contained in the same Regulation 4 of 1997 Regulations. What is important is that whereas clause (a), which refers to Higher Secondary Examination or the Indian School Certificate Examination, requires a period of study of 12 years, of which the last two years of study should comprise Physics, Chemistry, Biology and Mathematics, clause (b) is silent on this requirement of study of Physics, Chemistry, Biology in the last last two years of study. The Regulation making body, in its wisdom, has itself drawn a distinction between the eligibility requirement set out in clause (a) and clause (b) inasmuch as a candidate who has passed the Higher Secondary Examination or the Indian School Certificate Examination is required to study Physics, Chemistry, Biology, Mathematics and English in Class XI and Class XII which are the last two years of his study but for a candidate who has passed the Intermediate Examination in Science with Physics, Chemistry and Biology there is no such requirement.

It needs to be remembered that the Higher Secondary Examination/Indian School Certificate Examination as well as the Intermediate Examination are all 10 + 2 Examinations. Yet a distinction has been drawn by the Medical Council of India in the 1997 Regulations. The Higher Secondary Examination and the Indian School Certificate Examination have been clubbed together under Regulation 4(2)(a), but for the Intermediate Examination a separate requirement is contained in Regulation 4(2)(b) of the 1997 Regulations. It also needs to be noted that while Regulation 4(2)(a) deals with Physics, Chemistry, Biology and Mathematics with English, Regulation 4(2)(b) deals with Physics, Chemistry and Biology only. The Regulation making body was aware of the examinations conducted by these three separate Boards. It was aware that the Intermediate Board permits a candidate under Regulation 17(2) contained in Chapter XII to opt for one or at the most four subjects, after having cleared the Intermediate Examination. Thus, a candidate who qualifies the Intermediate Examination in particular year has the option to appear in all or any of the four subjects including Biology in subsequent year. Thus, a candidate who has

qualified the Intermediate Examination can opt for Biology subject in the subsequent year and on clearing it would be issued a certificate. It is for this reason that there is no requirement for a candidate appearing in the Intermediate Examination to study Physics, Chemistry and Biology in both Class XI and Class XII. Such a distinction has been consciously made and the requirement of study of Biology both in Class XI and Class XII cannot be inferred in the eligibility requirement contained in Regulation 4(2)(b).

The impugned order dated 7 October 2012, by which the claim of the petitioner for grant of the Eligibility Certificate has been rejected, only refers to clause (a) of Regulation 4(2). The petitioner, it needs to be emphasized, had not passed the Higher Secondary Examination or the Indian School Certificate Examination. There is no doubt that the petitioner had passed the Intermediate Examination conducted by the Board in 2003 with Physics, Chemistry and Mathematics and had subsequently appeared at the Intermediate Examination in Biology subject in 2004 in accordance with the Regulations and cleared it. Clause (b) of Regulation 4(2) dealing with Intermediate Examination does not require study of Biology, Physics or Mathematics during last two years, unlike, the requirement contained in clause (a) for a candidate who appears at the Higher Secondary Examination or the Indian School Certificate Examination.

What has to be noticed is that the Medical Council of India has not even referred to clause (b) of Regulation 4 (2) of the 1997 Regulations, which clause specifically deals with a candidate who has appeared at the Intermediate Examination. The order only refers to clause (a) relating to a candidate who has appeared at the Higher Secondary or the Indian School Certificate Examination. Learned counsel for the Medical Council of India has however, submitted that mere reference to a wrong Regulation will not make any difference because even under Regulation 4 (2) (b), the petitioner should have undertaken two years of study of Biology subject before appearing at the Intermediate Examination. The eligibility requirement under clause (b) has been examined and there is no manner of doubt that clause (b) does not require that a candidate should have studied Biology subject for two years before appearing at the Intermediate Examination. "

9. Against the said judgment, an SLP was filed by MCI bearing SLP (C) No.16152 of 2017 (Medical Council of India Vs. Pratik Singh & Ors.). The SLP was converted to Civil Appeal No.(s).6228 of 2018. On 9.7.2018, same was disposed of by the following order:-

"Leave granted.

In the light of the decision rendered in C.A. No.3952 of 2018 (Medical Council of India & Ors. vs. Aiman Kamal & Ors.) on 18th April, 2018, the instant appeal also stand disposed of on the same terms.

Pending application, if any, also stand disposed of"

10. Since the same was decided in view of judgment in a case of Aiman Kamal and others, it would be relevant to see the order of Aiman Kamal also. The said order reads as follows:-

**"O R D E R**

**IN C.A. No.3952/2018 @ SLP (C) No .35683/2016**

Heard learned counsel for the parties.

Leave granted.

The question arises with respect to the eligibility of the candidate for MBBS Course as prescribed by the Medical Council of India Regulations on Graduate Medical Education, 1997 (in short 'the Regulations') as provided in Regulation 4(2) same is extracted hereunder:

“4(2) He/She has passed qualifying examination as under:

(a)The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee , the candidates will have to undergo a period of one year pre -professional training before admission to the Medical colleges.

Now the regulation has undergone some change. The Regulations have been amended in the year 2018 by way of Regulations on Graduate Medical Education (Amendment), 2017 notified on 22nd January, 2018. In Regulation 4 (2)(a) following proviso has been added:

“In clause 4, under the heading Admission to the Medical Course-eligibility criteria and in sub clause 4(2)(a), the following proviso shall be added:

Provided that two years of regular and continuous study of Physics, Chemistry, Biology/Biotechnology taken together shall be required at 10+2 level for all the candidates. Candidates who have passed 10+2 from Open Schools or as Private candidates shall not be eligible to appear for National Eligibility-cum-Entrance Test. Furthermore, study of Biology/Biotechnology as an Additional Subject at 10+2 level also shall not be permissible.”

The High Court of Delhi has interpreted the unamended Regulation vide judgment and order dated 29.09.2006 in WP(C) No. 12487 of 2006 has interpreted the provision in the spirit that by attending the practical course as regular student qualification ought to have been obtained and all the requisite subjects should be cleared together.

The aforesaid opinion expressed by learned Single Judge was affirmed by the Division Bench in LPA No. 2033 of 2006 vide order dated 31.05.2007. Against the said order, special leave petition bearing No. 13571 of 2007 was preferred in this Court and that was also dismissed by this court on 17.08.2007. That is how the order passed by the High Court has attained finality.

However in the instant case, we need not go into various questions as the respondent has done MBBS from National Medical College Birgunj, Nepal which is one of the recognised institution by Tribhuvan University, Kathmandu. She has completed her final examination in the year 2014 from the said college. Thereafter she completed one year course to appear in Biology paper of 2006 as she has not done two years' course with the subject of Biology. As such applying the decision rendered by the Delhi High Court which appears to be appropriate, we have to non-suit the respondent. However, at the same time she has done the MBBS –from recognised university and has obtained the requisite degree from Nepal.

In the peculiar facts and circumstances of the case, we are not interfering with the impugned judgment but make it clear that it should not be treated as precedent in any other matter. As qualification obtained by the respondent no.1 is recognised one in India and subject to qualifying the screening test to be conducted as prescribed



by the Medical Council of India (in short 'the MCI'), obviously, she has to be registered.

Accordingly, the appeal stands disposed of.

IN C.A. No.3960/2018 @ SLP (C) No. 24301/2017

Leave granted.

As the instant case is covered by the order passed in C.A. 3952/2018, the instant appeal also stand disposed of on the same terms as stated in the said case.

It was submitted that screening test has already been held, if that be so, let result be declared."

11. A bare perusal of the judgment in the Aiman Kamal shows that the same relates only to Regulation 4 (2) (a) which is with regard to CBSE and ICSE Boards alone and not with regard to private State Board. Therefore, the law settled by the Division Bench of this Court was not disturbed or set aside by the Hon'ble Supreme Court
12. Submission of learned counsel for petitioners is that the said amendment is brought in the Regulation 4 (2) (a) and not in Regulation 4 (2) (b) and therefore, it is not applicable to petitioners.
13. The amendment made in the year 2018 is made only in Regulation 4 (2) (a) and no change is made in Regulation 4 (2) (b). The change made in Regulation 4 (2) (a) cover only ICSE and CBSE Boards and does not cover the State Board as is settled in the case of Pratik Singh (supra). Even the note appended by amendment to Regulation 4 (2) (a) itself shows that those persons who have studied Biology only for one year would be given one year further training by the Colleges mentioned in the said notification. The said training can only take place after a person has cleared his NEET. In view thereof, it cannot be said that the petitioners cannot face the counselling at this stage.
14. There is specific provision in Regulation 4 (2) (b) with regard to private students and, there is no amendment made in the same. There is nothing said with regard to private students of such Boards. Therefore, it was always open for MCI to amend Regulation 4 (2) (b) along with Regulation 4 (2) (a) more so in view of judgment in Pratik Singh (supra) which was very much in the knowledge of MCI.

Therefore, both Regulation 4 (2) (a) and 4 (2) (b) are for separate and distinct Boards as held in Pratik Singh case.

15. Learned counsel for respondents further placed reliance upon the judgment of Delhi High Court in Writ Petition No.10133 of 2009 (Mohammad Parvez Akhtar. Vs. Union of India and others and Letter Patent Appeal No.471 of 2009 (Mohd. Parvez Akhtar. Vs. Union of India and Ors.) judgment dated 12.10.2009 and SLP arising from the said judgment. The aforesaid judgment in the case of Mohammad Parvez and the order of the Letter Patent Appeal are considered by the Division Bench of this Court in Pratik Singh case. In view thereof, I am not inclined to accept argument of learned counsel for respondents.
16. In view of aforesaid, writ petitions are allowed. The respondents are directed to permit the petitioners in case they are covered by Regulation 4 (2) (b), for counselling along with the rest of the students. It is made clear that the respondents shall not apply Regulation 4 (2) (a) upon the petitioners who have come as private students from U.P. Board. Some of the students who were permitted counselling and were allotted colleges in these petitions have been stopped at that level by the respondents. In case they are qualified as per Regulation 4 (2) (b), respondents shall process their cases also further for allotment of seats along with the rest of the students.
17. With the aforesaid observations and directions, the writ petitions are disposed of.

**Order Date :-** 23.7.2018

Rajneesh DR-PS)

**(Vivek Chaudhary, J.)**