IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 841 / T.A. No. 1987.

DATE OF DECISION January 11, 88

Dr.(Mrs.) Anita Ganju & Ors — Petitioner s.

Shri Swatanter Kumar, — Advocate for the Petitioner(s)

Versus

Union of India & Others — Respondent s.

Shri Gopal Subramanian, with Ms. Sobha Dixit. — Advocates for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes.
2. To be referred to the Reporter or not ? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches? No

(Kaushal Kumar)
Member

(K.Madhava Reddy) 11.1.88
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI

Regn. OA No. 841/87 January 11,1988.

Dr. (Mrs) Anita Ganju & Ors ... Applicants
Vs.
Union of India & Others ... Respondents

CORAM:

Hon'ble Mr. Justice K. Madhava Reddy, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the applicants ... Shri Swatanter Kumar, counsel.

For the respondents ... Shri Gopal Subramanian with Ms.Sobha Dixit,counse

(Judgment of the Bench delivered by Hon'ble Mr. Justice K. Madhava Reddy, Chairman)

This is an application under Section 19 of the Administrative Tribunals Act, 1985 by three Junior Residents of Safdarjang Hospital, New Delhi calling in question the Office Order No. P(JN.1)87 Academic dated 18.6.1987 issued by Dr. J.L. Srivastava, Medical Superintendent (respondent No. 3 herein) terminating their sevices as Junior Residents with immediate effect. As the entire controversy centres on the ground on which the termination order is based and the circumstances in which it was made, it is necessary to read the impugned order (Annexure A4) in its entirety which is in the following words:

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"

Government of India
Office of the Medical Superintendent
Safdarjang Hospital
New Delhi-110016

No. P(JN.1)87 Academic Dated 18.6.87

OFFICE ORDER

It has been informed by the Secretary Medical Council of India that M.S. Ramaiah Medical College, Bangalore is not recognised by Medical Council of India. Therefore, the following Junior Residents are not eligible to work as Junior Resident at this Hospital. Hence the services of following Junior Resident(Ist Year) who have passed out from the same Medical College is terminated with immediate effect. No Experience Certificate will be issued to them.

1.	Dr. Preeti Chopra	Orthopaedics.
2.	Dr. Sangita Khosla	Rehabilitation.
3.	Dr. Anita Ganju	Radiology.

(Dr. J.L. Srivastava)
Medical Superintendent

Copy to:-

1. Accounts Section II in duplicate.
2. B.B.D. Concerned.
3. Individual concerned.
4. Doctor's hostel.
5. Library.
6. P. File.

C.T.C. "

The applicants studied for their MBBS Degree in the M.S. Ramaiah Medical College, Bangalore affiliated to the Bangalore University in Karnataka State. They passed the MBBS Degree Examination in the year 1985. All the three applicants completed their one year internship; applicants 1 and 3 at K.C. General Hospital, Bangalore and the applicant No. 2 from Safdarjang Hospital, New Delhi. They registered themselves with the Karnataka Medical Council. They applied for the post of Junior

14

Resident (Ist Year) in the Department of Obstetrics and Gynaecology in Safdarjang Hospital, New Delhi. They were offered the Junior Resident (Ist Year) post on identical terms. They furnished all certificates to the respondent No. 3 as per the requirements and conditions stipulated in the offer of appointment. They were appointed and admitted as Junior Resident upon executing an agreement, the terms of which are identical. The first applicant was appointed on 11.8.1986 in the department of Obstetrics and Gynaecology, the second on 1.10.86 in the department of Skin and V.D. and the third on 25.2.1987 in the department of Orthopaedic. While they were thus serving as Junior Resident, their appointment was terminated by the impugned order. On these averments which are not in dispute, the applicants inter alia contend -

(1) that the grounds on which their services are terminated are not valid in law;

(2) that even otherwise the order suffers from the vice of discrimination violative of the fundamental rights guaranteed to the citizens under Arts. 14 and 16 of the Constitution inasmuch as the services of Junior Residents who have passed from Medical Colleges similarly placed have not been terminated;

(3) that the Medical Superintendent was not competent to terminate their appointments; and

(4) that in any event, the respondents are estopped from terminating their appointments.

15

Point 1.

The ground on which the services of the three Junior Resident-applicants herein were terminated is that M.S. Ramaiah Medical College, Bangalore is not recognised by the Medical Council of India and, therefore, they are not eligible to work as Junior Residents at Safdarjang Hospital. The applicants contend that they are governed by the offer of appointment and the agreement entered into between them and the respondents. Neither the offer of appointment nor the agreement lays down that the Junior Residents should have graduated from a Medical College recognised by the Medical Council of India. Stipulation No. 7 of the offer of appointment merely lays down: "she will be required to produce a certificate before she joins the duties to the effect that she is registered with the Punjab Medical Council or equivalent body elsewhere." On production of the certificate evidencing their Registration with the Karnataka State Medical Council and after the interview, the applicants were appointed as Junior Residents upon their executing an agreement. The agreement binds both the parties. Nowhere does the agreement lay down that if the applicants have passed from MS Ramaiah Medical College, Bangalore or any college not recognised by the Medical Council of India, their appointment would be terminated. The applicants had not suppressed any facts and had

disclosed that they had passed from MS Ramaiah Medical College affiliated to the Bangalore University and that the Bangalore University had issued the medical degree which is a degree recognised by the Medical Council of India. They produced the certificate evidencing their registration with the Karnataka Medical Council. The respondents had accepted the same and acted upon it by offering the appointment. They had entered upon the duties of Junior Residents in the Safdarjang Hospital purely on the terms of the contract. The applicants had not committed a breach of the contract which entitled the respondents to terminate the contract. The respondents had, therefore, no right to terminate the contract or the services until the entire period of one year residentship was completed. The termination of applicants' services is in violation of the terms of the contract and cannot be sustained.

The Karnataka Medical Council is a Medical Council constituted under a State enactment. Just as the Punjab Medical Council ~~xx~~ constituted under a State law maintains a register of medical practitioners, the Karnataka Medical Council also maintains a register. The Indian Medical Council Act, 1956 defines a 'State Medical Council' under

17

Section 2(j) of the Act as under:

> "(j) 'State Medical Council' means a medical council constituted under any law for the time being in force in any State regulating the registration of practitioners of medicine".

The Act also defines the 'State Medical Register' under Section 2(k) as under:-

> "(k) 'State Medical Register' means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine".

Section 21 of the Indian Medical Council Act directs the Medical Council of India to maintain the Indian Medical Register in the following words:

> "21. The Indian Medical Register. - (1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.
>
> (2) It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.
>
> (3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872, and may be proved by a copy published in the Gazette of India."

Section 2(h) of the Act defines 'Recognised Medical Qualification' as follows:-

> "(h) "recognised medical qualification" means any of the medical qualifications included in the Schedules."

Section 22 of the Act provides for supply of copies of the State Medical Registers in these words:-

> "22. Supply of copies of the State Medical Registers. - Each State Medical Council shall supply to the Council six printed copies of the State Medical Register as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Registrar of xxx State Medical Council shall inform the Council without delay of all additions to and other amendments in the State Medical Register made from time to time."

Section 23 enjoins registration in the Indian Medical Register as under:-

> "23. Registration in the Indian Medical Register. - The Registrar of the Council may, on receipt of the report of registration of a person in a State Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register:
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> Prorvided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification".

From the above provisions, it is clear that when a person is enrolled on any State Medical Register and possesses any of the "recognised medical qualifications", his name must be entered in the Indian Medical Register.

19

Whether a person who is enrolled on any State Medical Register and who possesses any of the recognised medical qualifications could be denied registration in the Indian Medical Register or has a statutory right to be so registered, we would be discussing hereinafter. Suffice at this stage to emphasise that the Indian Medical Council Act recognises enrolment on all State Medical Registers, be it the Karnataka Medical Register or the Punjab Medical Register, to be on par and entitles the person so enrolled and possessing "recognised medical qualifications" to be registered in the Indian Medical Register. The Punjab Medical Council and the Karnataka Medical Council must, therefore, be deemed to be equivalent bodies as envisaged by stipulation 7 of the offer of appointment.

Even otherwise, the ground on which the services of the Junior Residents were terminated is unsustainable in law. The applicants were not only registered with the Karnataka Medical Council recognised under the Indian Medical Council Act, 1956 as a State Medical Council but also claim to possess recognised medical qualification as envisaged by the Indian Medical Council Act. The Indian Medical Council Act statutorily enjoins the Indian Medical Council to enter the names of all persons enrolled on the State Medical Register in the Indian Medical Register provided they possess the recognised medical qualifications.

It is, therefore, necessary to see what is a "recognised medical qualification" within the meaning of the Act and whether the applicants possess such a "recognised medical qualification". As defined under Section 2(h), recognised medical qualification means "any of the medical qualifications included in the Schedules". Section 11 of the Indian Medical Council, 1956 provides for recognition of medical qualifications granted by Universities or medical institutions in India in the following words:

> "11. Recognition of medical qualifications granted by Universities or medical institutions in India. - (1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.
>
> (2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazettee, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date".

The First Schedule to the Act enumerates the recognised medical qualifications granted by the

21

Universities or Medical Institutions in India. The Degree of Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) awarded by the Bangalore University finds a place in the First Schedule and as such is a recognise medical qualification within the meaning of Section 11 read with Section 2(h) of the Indian Medical Council Act. All the applicants being in possession of recognised medical qualifications and having been enrolled on the Karnataka Medical Register are entitled to be registered in the Indian Medical Register under Section 21 read with Section 23. In fact, under Section 21(1) the Council is enjoined to maintain, in the prescribed manner, a register of medical practitione rs to be known as the Indian Medical Register and the Council is required to include in such register "the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualification". This statutory duty cast upon it has to be performed suo motu. Persons entitled to be so registered may also apply for inclusion. The Council is under a further obligation to publish the names of all such persons in the Gazette of India. The register so maintained is declared to be a public document within the meaning of the Indian Evidence Act. Although it is contended for the respondents that it is not

22

obligatory to register the name of every person who is enrolled in a State Medical Register and possesses the recognised medical qualification in the Indian Medical Register because of the word "may" occurring in Section 23, it is well settled that this power cannot be exercised arbitrarily; nor can it be refused to be exercised. Any discretion vested in the Registrar of the Council under Section 21 of the Act cannot be exercised in derogation of the express proviso contained under the very same Act. When Section 21 enjoins the Council to include the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualification, merely because in Section 23 the word "may" occurs, the Registrar cannot refuse to register their names or refuse to perform his statutory duty. The proviso occurring in Section 23 further makes it clear that all that the Registrar is to be satisfied with is whether the person concerned possesses a "recognised medical qualification". Once it is found that a person possesses a recognised medical qualification, he has no option but to register his name. The word "may" occurring in Section 23 must in the circumstances, therefore, be read as "shall". Having regard to the scheme of the Act and especially having regard to Sections 21 and 22 which cast a statutory duty upon the Registrar of the Council to

enter the names of all persons possessing recognised medical qualifications in the Register, the word "may" occurring in Section 23 has to be read as "shall". Viewed from another angle also the word "may" should be read as "must" or "shall". Unless one is enrolled by either of the State Medical Councils in the Medical Register, one is not entitled to practise in any State as laid down. If a person has acquired medical qualifications as envisaged by the Act, he is entitled to be registered in the Indian Medical Register. But once a person is enrolled in a State Medical Register, he is at least entitled to practise in that State and in what other State he can practise, it is unnecessary for us to decide. But once a person is enrolled in a State Register and possesses the required medical qualification, he is entitled to practice throughout the territory of India for under Section 21 of the Act such a person is entitled to be registered in the Indian Medical Register and the Registrar has no option but to enter his name in the Indian Medical Register. Right to practise the profession of medicine is a Fundamental Right guaranteed under Art.19(1)(g) of the Constitution upon which only reasonable restrictions as envisaged by clause (6) of

can be imposed.

Art. 19. The restrictions envisaged by law are contained in Sections 21, 22 and 23 of the Indian Medical Council Act. If a citizen possesses a recognised medical qualification and is on the rolls of a State Medical Council, he is entitled to be on the rolls of the Indian Medical Council and the Medical Council of India is under a statutory obligation to enter the name of such a person in the Indian Medical Register which it is required to maintain upto date. By failing to perform this statutory duty which is more or less a ministerial act, the Registrar of the ~~Indian~~ Medical Council of India cannot deprive a person of his right to practise the profession of Medicine throughout the territory of India. It was so read in Nichols v. Baker (1980) 44 Ch D 262, 270.

In Delhi and London Bank v. Orchard (1877) 4 IA 127 at p. 135, Sir Barnes Peacock while construing Section 21 of Act XIV of 1859 remarked:

> "There is no doubt that in some cases the word 'must' or the word 'shall' may be substituted for the word 'may'."

In Province of Bombay v. K.S. Advani (1950 SCR 621, 732) Das, J. speaking for the court observed:

> "The authorities show that in construing a power the Court will read the word 'may' as 'must' when the exercise of power will be in furtherance of the interest of a third person for securing which the power was given. Enabling

> words are always potential and never in themselves significant of any obligation. They are read as compulsory where they are words to effectuate a legal right".

A similar view was taken in State of Uttar Pradesh v. Jogendra Singh(1). The learned judges of the Supreme Court declared:

> "There is no doubt that the word "may" gnerally does not mean "must" or "shall". But it is well-settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the Legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed."

On that principle, the Supreme Court held:

> "Rule 4(2) of the U.P. Disciplinary Proceedings (Administrative Tribunal) Rule, 1947 imposes an obligation on the Governor to grant a request made by the gazetted government servant that his case should be referred to the Tribunal under the Rules."

In Dr. N.B. Khar vs. State of Delhi(2), the Supreme Court held:

> "words which are themselves enabling merely may under certain circumstances impose an obligatory duty"

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(1) AIR 1963 SC 1618

(2) 1950 SC Reports 519 at 526.

We have no doubt that a reading of the proviso to Section 23 of the Indian Medical Council Act leaves no manner of discretion in the Registrar to refuse registration to persons who are registered with the State Medical Council and possess the recognised medical qualification; their names have to find a place in the Indian Medical Register. The applicants having been enrolled on the State Medical Register and being in possession of a recognised medical qualification were, therefore, entitled to have their names entered in the Indian Medical Register maintained by the Medical Council of India. The Registrar is also required to suo motu enter the names of the applicants and all those doctors whose names find a place in the Karnataka State Medical Register and who possess recognised medical qualification and to enter their names under sub section (1) of Section 21 in the Indian Medical Register. By failing to perform a statutory duty, neither the Medical Council of India nor the respondents can make it a ground for termination of the services of the applicants as Junior Residents.

On behalf of the Respondents, it is next argued that the MS Ramaiah Medical College, Bangalore is not a recognised medical institution. What Section 11 requires is possession of a recognised medical qualification. It is nobody's case that the MBBS degree awarded by the Bangalore University is not a recognised medical

27

qualification. What is contended is that the M.S.Ramaiah Medical College where the applicants studied for their MBBS degree is not a recognised college and, therefore, they cannot be deemed to be possessing a recognised medical qualification. But this contention ignores the fact that the MS Ramaiah Medical College does not award any degree. The degree is awarded to the students of medical colleges recognised by the Bangalore University upon their undergoing a course of study prescribed by the Bangalore University and upon their passing an examination held by the Bangalore University, securing the requisite percentage of marks. It is the Bangalore University that awards the degree and not the MS Ramaiah Medical College. As stated in Section 11 of the Indian Medical Council Act, the First Schedule to the Act specifies the recognised medical qualifications granted by Universities or Medical Institutions in India.

It is pertinent to note that Section 11 of the Act provides for recognition of medical qualifications granted by universities or medical institutions in India and not medical colleges as such. The expression "university" as well as "medical institution" occurring in Section 11 have been defined under the Act. The word "university" is defined under Section 2(1) as under:

> "2(1) "University" means any University in India established by law and having a medical faculty".

"Medical Institution" is defined under Section 2 (e) as follows:

> "2(e) "Medical Institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine"

Section 11 thus does not make provision for recognition of a college as such. It is, however, argued that though a medical college cannot be termed as a University, it is certainly a medical institution. But having regard to the definition of medical institution in Section 2(e), in order that a medical college may qualify to be called a medical institution within the meaning of the Act, it must be an institution which itself grants degrees, diplomas or licences in medicine. The Act primarily envisages recognition of medical qualifications granted by the Universities or medical institutions in India. The MS Ramaiah Medical College is an affiliated medical college of the Bangalore University and the students admitted to the MS Ramaiah Medical College only undergo a course of study and training in that college. The MS Ramaiah Medical College does not itself hold any examination or award any degrees, diplomas or licences in medicine. Examinations are held by the Bangalore University to which that college is affiliated and it is the Bangalore University that awards the MBBS degree. It is degree in medicine awarded by the Bangalore University that the applicants have. The question of recognition of the MS Ramaiah Medical College under Section 11 does not

arise. It is the medical qualification awarded to the students who have undergone training in the MS Ramaiah Medical College affiliated to the Bangalore University that is recognised under Schedule I of the Act. When there is no specific provision for ~~xxxxx~~ further recognising a medical college affiliated to a university, the degree of which is recognised under the Act, it is doubtful whether an affiliated college could be derecognised under Section 19 while continuing the recognition of the medical qualification awarded by such university. However, it is unnecessary for the purpose of this case to go into that question and express any opinion for no proceedings have been taken even under sub-section (4) of Section 19 to derecognise the MS Ramaiah Medical College which continues to be affiliated to the Bangalore University and the MBBS degree awarded by the Bangalore University being included in Schedule I continues to be a recognised medical qualification under the Act. The fact that they have studied in the MS Ramaiah Medical College cannot, therefore, affect, in the least, the Bangalore University degree awarded to them nor does that fact make that degree an unrecognised medical qualification under the Act. In fact, in the Schedule, there is no mention of any particular college being recognised or not recognised, at least not in respect of a college affiliated to the Bangalore University. Once the degree awarded by a particular University is recognised, the only method of withdrawing the recognition is

contained in Section 19 of the Act which reads as under:

"19. Withdrawal of recognition. - (1) When upon resort by the Committee or the visitor, it appears to the Council -

(a) that the course of study and examination to be undergone in, or the proficiency required from candidates at any examination held by, any University or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University or medical institution or in any college or other institution affiliated to that University,

do not conform to the standards prescribed by the Council, the Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or medical institution, with an intimation of the period within which the University or the medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when

granted before a specified date, or that the said medical qualification if granted to students of a specified college or institution affiliated to any University shall be a recognised medical qualification only when granted before a specified date or, as the case may be, that the said medical qualification shall be a recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date."

This provision makes it abundantly clear xxxx what may be recognised as a medical qualification awarded by a University or Medical Institution. Once a degree or a certificate of a particular University or Institution is recognised, as is done in the case of MBBS degree granted by the Bangalore University, that recognition may be withdrawn only after following the procedure laid down in Section 19 of the Indian Medical Council Act. The Medical Council may only make a recommendation to the Central Government to withdraw the recognition if the course of study and examination to be undergone in or the proficiency required from the candidates at any examination held by any University or Medical Institution or the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University or Medical Institution or in any college or institution affiliated to that University do not conform to the standards prescribed by the Government. The recognition granted

to the degree of a university by inclusion of that qualification in Schedule I as envisaged by Section 11 cannot be withdrawn summarily, much less can it be done by the Council or the Medical Superintendent or by the Registrar of the Council by issuing a letter to that effect. Any such withdrawal of recognition has to be preceded by an inquiry as to whether the prescribed standards have been maintained by the college or the university or the institution concerned. If the Council upon inquiry finds that the standards prescribed are not maintained by any college or any institution affiliated to a University, the Council may make a representation to the Central Government to withdraw the recognition and not until then. However, such a recommendation is neither binding on the Central Government nor final. The Central Government is required to send such a representation to the Government of the State in which the University or the Medical Institution is situated. Thereupon, that State Government is required to forward it along with its own remarks to the particular college, university or medical institution with an intimation of the period within which the university or the medical institution may submit its explanation to the State Government. On receipt of the explanation or without the receipt of such explanation, upon the expiry of the period, the State Government is required to make its recommendation to the Central Government. Thereafter, the Central Government may make such further inquiry, as it may deem

fit, and direct withdrawal of recognition of the degree as such or withdrawal of recognition of the degree awarded to a candidate who has studied in a particular college affiliated to the University from a specified date. Even that order will not take effect immediately. Any such order has to be notified in the Official Gazette and must also direct that an entry shall be made in the appropriate Schedule against the said medical qualification to that effect. Until then, the recognition once awarded to a medical qualification by inclusion of that qualification in Schedule I does not stand withdrawn under the Act. No other authority has power to withdraw recognition to a medical qualification under the Indian Medical Council Act. No proceedings as envisaged by Section 19 have been taken in respect of the MS Ramaiah Medical College, Bangalore. At least, none have been brought to our notice. In any event, no Notification envisaged by sub-section 4 of Section 19 has been issued; much less published in the Official Gazette. In the result, the MBBS degree awarded by the Bangalore University to the applicants continues to be a recognised medical qualification under Schedule I of the Indian Medical Council Act.

In regard to a Post Graduate Medical Degree granted by a University duly established by statute in India, the Supreme Court in B.L. Asawa v. State of Rajasthan(3) laid down:

> "A Post-graduate Medical Degree granted by a university duly established by statute in India and which has also been recognised by the Indian Medical Council by inclusion in the Schedule of the Medical Council Act (emphasis supplied) has ipso facto to be regarded, accepted and treated as valid throughout our country. In the absence of any express provision to the contrary, such a degree does not require to be specifically recognised by other Universities in any State in India before it can be accepted as a valid qualification for the purpose of appointment to any post in such a State".

The same would apply to any recognised medical qualification. In the absence of any order under Section 19, inclusion of the MBBS Degree awarded by the Bangalore University which is included in Schedule I to the Indian Medical Council Act makes all such medical graduates, including the applicants, eligible for registration in the Indian Medical Register and also for appointment to services including Safdarjang Hospital. The order of termination made on the ground that MS Ramaiah Medical College is not recognised by the Medical Council of India is based on an erroneous assumption of facts and law and is wholly unsustainable.

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(3) AIR 1982 SC 933

35

Along with further affidavit of Dr.S.D.Sharma, Medical Superintendent, Sardarjang Hospital, a list of medical colleges in India recognised by the Medical Council of India is submitted in which the name of MS Ramaiah Medical College, Bangalore does not appear. On that basis, it is asserted that MS Ramaiah Medical College is not a recognised medical college. In view of the above discussion, it is clear that the Medical Council of India cannot by itself draw up a list of recognised medical colleges and treat some of the colleges of a University whose degrees are included in Schedule I as recognised medical qualifications as not recognised. The Medical Council of India can only make a recommendation to the Central Government as envisaged by Section 19 for withdrawal of recognition to the medical qualification with reference to a medical college. Only after following the statutory procedure laid down by Section 19 and upon amendment of Schedule I to the Act and after publication of a Notification in the Official Gazette, can any college affiliated to a particular university be named as a college, institution or university in respect of which recognition has been withdrawn. The list of colleges filed along with the

affidavit has no statutory force. Merely because the name of the MS Ramaiah Medical College does not appear in the said list of recognised Medical Colleges, the recognised medical qualification awarded to the applicants by the Bangalore University does not cease to be a recognised medical qualification within the meaning of the Act. The communication addressed by the Assistant Director General (ME) on 3rd July, 1987 to the Medical Superintendent, Safdarjang Hospital stating "I am directed to say that it has been decided that internship and house jobs be offered only to the candidates qualifying from recognised medical colleges. It is requested that the above facts may be kept in view while offering internship and house jobs to the candidates" does not advance the case of the respondents. Even here, the Office of the Director General never directed that the services of Junior Residents to whom jobs had already been offered and who were serving should be terminated. Nor did it say that the MS Ramaiah Medical College is not a Recognised medical college under the Indian Medical Council Act. Much less did it direct the termination of the services of the applicants. That order, in fact, was issued on 3rd July,1987,

nearly two weeks after the impugned order was made and was evidently intended to guide future appointments and not to validate the illegal termination of the applicants' services already ordered. The impugned order is, therefore, illegal and void and must be quashed.

Point 2.

It was argued at the Bar that as the names of applicants are not registered with the Punjab Medical Council or with the Indian Medical Council, they cannot be continued as Junior Residents. There is no basis for this in terms of the appointment. Further that is not the ground on which the services of the applicants were terminated. That apart, it is brought to our notice that students of the University College of Medicine, Delhi University not registered with the Indian Medical Council or any other State Medical Council and some medical graduates who have studied in colleges similarly placed as MS Ramaiah Medical College are continuing as Junior Residents while the applicants' services are terminated. If that be so, the action of the respondents in terminating the services of the applicants would be clearly discriminatory and violative of Arts.14 and 16 of the Constitution. The order would have to be quashed even on that account.

36

Point 3.

The order of termination was issued on 18.6.1987 by the Medical Superintendent, Dr.J.L.Srivastava. The agreement pursuant to which the applicants were appointed as Junior Residents was entered into between the applicants on the one hand and the President of India (referred to as the Government herein) on the other. That agreement was signed on behalf of the Government by the then Medical Superintendent, Dr. S.D. Sharma. Dr. Sharma had gone abroad and Dr. J.L.Srivastava was only lookingafter the work of Medical Superintentdent. He could at the most be considered as holding current charge of the said post. According to the applicants, Dr. J.L. Srivastava was not competent to terminate their services. Only the Government could have ordered termination of their services. It is now on record as evidenced by letter No.PF-I-649/86-Admn.I dated 15.6.1987 addressed by Dr.S.D. Sharma to the Director General, Health Services that he was proceeding to Vienna on 16th June, 1987 and after attending the Conference at Vienna would be returning to attend to his duties from 28th June,1987. By that letter, Dr.Sharma also informed the Director General Health Services that "during my absence Dr.J.L.Srivastava, Consultant and Head of the Department of Burns, Plastic

& Maxillofacial Surgery will look after the work (emphasis supplied) in addition to his own duties". It is only by virtue of this letter addressed to the Director General, Health Services and copied to the Joint Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi that Dr. J.L.Srivastava purported to exercise the power to terminate the services of the applicants. No further order appointing him as Medical Superintendent or empowering him to exercise the powers vested in the Medical Superintendent during this period was issued either by the Govt. or by the Director General, Health Services. The Director General, Health Services by his order No.G-17018/2/86-MH (Pt.) dated 6.7.87 accorded ex post facto approval to this arrangement by recording that "Dr.J.L.Srivastava, Consultant and Head of the Department of Burns, Plastic & Maxillofacial Surgery will look after the duties of Medical Superintendent at Safdarjang Hospital, New Delhi with effect from 16.6.1987 to 29.6.1987 in his absence on deputation of an Indian delegation to attend the International Conference on Drug Abuse and Illicit Trafficking to be held at the Ministerial level at Vienna". ~~xxxxxxxxxx~~ Much earlier to this, the impugned Order was made on 18.6.1987. From the aforesaid authorisation issued by Dr.S.D.Sharma and even

from the subsequent ex post facto approval accorded by the Director General, it is plain that Dr. J.L. Srivastava was not appointed as Medical Superintendent. Dr. S.D. Sharma continued to be Medical Superintendent all through; only because he was away in Vienna and was unable to attend to the day to day duties, he empowered Dr.J.L.Srivastava to "look after the work". Dr. Srivastava was not empowered to terminate the services of any employee, much less was he competent to terminate the appointment of the applicants on the grounds mentioned in the impugned order. The ex post facto approval given by the Director General was only to the power that was delegated by the Medical Superintendent, Dr.S.D.Sharma to Dr. J.L. Srivastava on 15.6.1987. This ex post facto approval did not enlarge the ambit of the authority of Dr.J.L. Srivastava so as to clothe him with the power to terminate the services of Junior Residents appointed for a fixed period under an agreement between them and the Government. The ex post facto approval authorised Dr.Srivastava merely to "look after the duties of Medical Superintendent at Safdarjang Hospital". The impugned order of termination suffers from want of jurisdiction and lack of power on the part of Dr.J.L.Srivastava who made the orders. The orders are thus liable to be quashed on this further ground as well.

41

Point 4.

We find that the applicants plea of estoppel must in any event prevail. The applicants had applied for the post of Junior Residents disclosing all the facts and in particular that they had studied in the MS Ramaiah Medical College, that they were awarded MBBS Degree by the Bangalore University and they were registered with the Karnataka Medical Council. None of those statements are found to be incorrect. The respondents accepted the statements and appointed them for a period of one year. Though it is now argued on behalf of the respondents that the initial appointment is for a lesser period than one year, it is not denied that the total period of Junior residentship is one year. The agreement places the matter beyond doubt. It requires the Junior Residents in unequivocal terms to serve for a period of one year. In fact, while reserving the power in the Government to extend this term for a short period until arrangements for a substitute are made, "the Junior Residents are required to devote whole time to the duties of the said service, shall not resign except with the previous written sanction of the authority competent after giving 30 days notice in writing and would be allowed only 24 days leave in a complete year". The agreement further lays down that "at the end of residency, this contract would come to an end." It also stipulates that "though selected for

42

the first year, the junior resident would be eligible for the contract for the second and third year only on satisfactory completion of the first year". Thus the period of contract is one year and this period can be cut short only on the grounds mentioned therein. The contract no-where stipulates that if the Medical College where the junior residents studied for their medical degree is found to be not one of the medical colleges recognised by the Medical Council of India their services could be terminated. The applicants had even by the date of the impugned order completed a major portion of their one year junior residentship. By the date of impugned order, the first applicant had completed 8 months and only 4 months of Junior Residentship remained to be completed and that she completed the same by October, 1987. That she was allowed to complete under the interim order of this Tribunal. Likewise, the second applicant had completed 9 months by the date of the termination order and had to serve only 3 months to complete one year; that she was allowed to complete under the interim order of this Tribunal. The third applicant had completed 4 months by the date of the termination order and had to complete 8 months and would be completing that period by February, 1988. They have spent valuable period of

43

their life serving the Safdarjang Hospital and have received appropriate training. There is nothing against them except that the MS Ramaiah Medical College where they had studied for the medical degree and which continues to be an affiliated college of the Bangalore University and recognition of which has not been withdrawn under Section 19 is stated to be "not recognised by the Medical Council of India ". By accepting and acting on the offer made by the Respondents, the applicants altered their position and entered service as Junior Residents. The applicants were not guilty of any misrepresentation. The respondents having appointed them cannot be allowed to resile from that position to the disadvantage of the applicants who have spent precious one year of their life in the service of the Hospital run by the respondents. This period is important to them not only for the purpose of practising the profession of medicine but also for the purpose of their higher education. On completion of this one year period of internship, they are entitled to receive "Experience Certificate" as is issued to all other Junior Residents. Under the impugned order, the respondents have notified the applicants that they would not issue that experience certificate. This deprives them of the right to apply and appear for Post Graduate

44

education and also for employment. The respondents by their unilateral act cannot cause this irreparable loss to the applicants and place them at a serious disadvantage for all time to come. If the respondents have erred, which as already discussed above they had not, in admitting them as Junior Residents, even then they cannot be permitted to resile from that position and cancel the appointment. This appointment not only constitutes service; it is also a course of specialised training.

As early as in 1956 in a Writ Appeal(4) directed against the judgment of the learned single judge, Rajamannar, CJ speaking for the Bench invoked the principle of equitable estoppel to issue a mandamus. In that case, the petitioner relying on the "endorsement of eligibility on the SSLC Book which must be deemed to have been made on behalf of the University, as a result of which the petitioner undertook a course of study involving the expenditure of time and money" pleaded that "the university was estopped from issuing an order that he could not continue his study and that he should leave the college". The Bench declared "In our opinion, this is an instance of something much more substantial than what Mr. Venkatasubramania Iyer characterised as sentimental estoppel. It is a case of legal or equitable estoppel which satisfies practically all the conditions embodied in Section 115

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(4) AIR 1956 Madras 309

of the Evidence Act". The Court also noted:

> "It was not suggested by the University that the petitioner in this case knew that he had not been declared eligible and that his action was 'mala fide' in embarking on a course of University study. Nor was it suggested that he had procured endorsement of eligibility by fraud or improper means. In these circumstances, we consider that a Mandamus should issue both to the University of Madras and to the Principal of the Thiagaraja College to forbear from preventing the petitioner to complete his intermediate course and appear for the intermediate examination in due course."

In Union of India v. Godfrey Philips India Ltd.(4) the Supreme Court declared:

> "The doctrine of promissory estoppel is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel...."

In yet another case of Rajendra Prasad v. Karnataka University(5) even while holding that no material had been placed before the court on the basis of which the court could say that "the decision of the Karnataka University not to recognise the Higher Secondary Examination of the State of Rajasthan or the Ist Year B.Sc examination of the Universities of

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(4) AIR 1986 SC 806
(5) AIR 1986 SC 1448

46

Rajasthan and Udaipur as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore was arbitrary or not based on reasons", and rejecting the contention of the applicants therein, the Supreme Court observed:

> "the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted".

The court emphatically declared:

> "Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants. It is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We

47

> do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would, therefore, notwithstanding the view taken by us in this judgment allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission ".

These observations would apply with greater force to the case of the applicants. The respondents by their own belated "discovery" that the MS Ramaiah Medical College, Bangalore is not recognised (which itself is found to be erroneous) cannot mar the future of the applicants by terminating their service. They are estopped from doing so.

At the conclusion of the arguments on 26.10.1987, we had directed that "Experience Certificates" as were issued to the other Junior Residents should be issued to the applicants as well at the conclusion of one year Junior Residentship. Such certificates already issued to two applicants who had completed one year of Junior Residentship and the one that would be issued to one of the applicants on the completion of her one year Junior Residentship are declared to be valid for all purposes.

In the application, there is a bald allegation that the impugned order is vitiated by mala fides and that it is also vindictive. This allegation is vague and no facts are averred on the basis of which any mala fides

could be inferred. It is one thing to say that the order is illegal and unjust and totally different to allege that it is vitiated by mala fides. We hold that the order is not actuated by mala fides. However, inasmuch as it is illegal, unjust and unsustainable in law for the reasons discussed in detail above, it is quashed. The application is accordingly allowed but in the circumstances with no order as to costs.

(Kaushal Kumar)
Member.

(K.Madhava Reddy)
Chairman.