

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/574/2020

RAJDEEP DAS S/O- DR NIRMAL KUMAR DAS, PERMANENT R/O-
JAGANNATH MANDIR ROAD, P.O- NAGAON, P.S- NAGAON SADAR, DIST-
NAGAON, ASSAM, PIN- 782001, PRESENT R/O- 660 KING STREET,
APARTMENT 261, SAN- FRANCISCO- 94107, USA REP. BY HIS FATHER
NAMELY DR NIRMAL KUMAR DAS, S/O- LATE NARENDRA CHANDRA DAS,
R/O- JAGANNATH MANDIR ROAD, P.O- NAGAON, P.S- NAGAON SADAR,
DIST- NAGAON, ASSAM, PIN- 782001

VERSUS

THE UNION OF INDIA AND 3 ORS REP. BY ITS SECRETARY TO THE GOVT OF
INDIA, DEPTT OF HIGHER EDUCATION, MIN OF HUMAN RESOURCE
DEVELOPMENT, WEST BLOCK1, WING- 6, 2ND FLOOR, R K PURAM, NEW
DELHI- 110066

2:THE UNDER SECRETARY TO THE GOVT OF INDIA DEPTT OF HIGHER
EDUCATION MIN OF HUMAN RESOURCE DEVELOPMENT WEST BLOCK-1
WING-6 2ND FLOOR R K PURAM NEW DELHI- 110066

3:THE SECRETARY TO THE GOVT OF INDIA MIN OF EXTERNAL AFFAIRS
CPV DIVISION NEW DELHI

4:THE SECRETARY
TO THE GOVT OF INDIA MIN OF HEALTH AND FAMILY WELFARE 156-A
WING NIRMAN BHAVAN NEW DELHI

5:THE MEDICAL COUNCIL OF INDIA REPRESENTED BY ITS SECRETARY
GENERAL BOG-MCI POCKET-14 SECTOR-8 DWARAKA PHASE I NEW
DELHI- 110077

Advocate for the Petitioner : MR. A D CHOUDHURY

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

JUDGMENT & ORDER (CAV)

Date : 07-12-2020

Heard Mr. A.D. Choudhry, learned counsels for the petitioner. Also heard Mr. Ranjit Kr. Dev Choudhury, learned Assistant Solicitor General, Gauhati High Court along with Mr. H. Gupta, advocate for respondents Nos. 1, 2, 3 & 4 and Mr. A.M. Bora, learned senior counsel assisted by Mr. D.K. Baidya, appearing for the impleaded respondent No. 5, Medical Council of India.

2. The writ petitioner obtained his M.B.B.S degree from the Kathmandu Medical College under Kathmandu University in the year 2009 and thereafter obtained his Master of Science in Clinical Pathology (M.S.C.P) degree in the year 2011 from Gulf Medical University, Ajman UAE. He was also conferred Ph.D by the University of Adelaide, Australia, for his dissertation on "The Role of Micro RNA-194 and Micro RNA-375 in Prostate Cancer Metastasis". After obtaining his

Ph.D. he received an offer to work as Post Doctoral Research Scholar in the Department of Radiation Oncology, School of Medicine, University of California, San Francisco. His appointment as a Post Operate Research Scholar was renewed on 02-10-2017 and subsequently on 11-03-2019 and the appointment is valid till 11-12-2020-21.

3. It is the case of the petitioner that in order to enable him to continue his research under the University of California, the petitioner is required to obtain a G-1 Visa to satisfy the terms of his appointment, which is required for holding a non-immigrant Visa issued by the Government of U.S.A to Research Scholar, Professor, Exchange Visitor participating in programme etc. The petitioner states that for obtaining G-1 Visa by any Indian Citizen, a certificate to the effect that there is "No Obligation to Return to India" issued by the competent authority of the Government of India. This certificate is commonly known as 'NORI' certificate.

According to the petitioner, the NORI certificate is ordinarily issued by the Department of Higher Education, Ministry of Human Resource Development, Government of India. But for medical practitioners, the NORI certificate is issued by the Ministry of Health & Family Welfare, Government of India. The application for the certificate is required to be enclosed with all relevant documents/testimonials certificates is required to be submitted through the Web Portal available for seeking NORI certificate from the Government of India.

4. The petitioner in the first instance applied for issuance of NORI certificate in January 2019 in the Web Portal. According to the petitioner the application was duly supported by all relevant documents as required. However, on 13-02-2019 the respondent No. 2 rejected his application by informing that the Ministry of Health & Family Welfare (Government of India) has clarified that an applicant who possesses medical qualifications included in Schedule- 1,2 & 3 of the Indian Medical Council Act, 1956 (hereinafter referred to as the Act of 1956) as well as applicants possessing the medical qualifications BDS, MDS and Diploma after attaining BDS qualification shall not be issued the NORI certificate under any circumstances and hence the request for issuance of NORI certificate was rejected.

5. Subsequently, in December, 2019 the petitioner again resubmitted another application seeking issuance of NORI certificate explaining his reasons for the requirement of said NORI certificate. However, on 25-12-2019 his second application was again rejected on the same ground which was reflected in the earlier rejection order. The petitioner submits that all other Government agencies from whom the clearance/no objection is required has duly granted him to apply for NORI certificate. The petitioner represented before the competent respondent authorities submitting that the grounds for rejection of his application cannot be with reference to his medical qualification being covered under Schedule-1, 2 & 3 appended the Act of 1956 is as much as he is not a medical graduate from any Indian or Foreign Colleges/Institutions mentioned in the Schedules 1, 2 & 3

appended to the Act of 1956. The petitioner further submits that the grounds for rejection are not applicable to him as he did not obtain his M.B.B.S degree and/or of Post Graduate from any Medical College in India which is recognised by Indian Medical Council Act, 1956. According to the petitioner the Medical College from where he had obtained M.B.B.S degree, namely, the Kathmandu Medical College is not a recognised college/institution in terms of Schedules 1, 2 & 3 appended to the Act of 1956. Accordingly, he submits that the impugned rejection be set aside and suitable directions be issued to the respondent authority to re-consider his application afresh and issue the NORI certificate to him as sought for. The grounds on which the NORI application of the petitioner is rejected are not at all applicable to him.

6. The learned counsel for the petitioner pressed into service the judgment of the Apex Court rendered in the case of **Yash Ahuja & Ors. -vs- Union of India** reported in **(2009) 10 SCC 313**, to support his contention the proposition that although the Kathmandu Medical College is shown to be part of Second Schedule to the Act of 1956 but it is stipulated in the Second Schedule itself in respect of Kathmandu Medical College that the recognition for medical qualifications is only in respect of Manipal College of Medical Sciences, Pokhara when granted on or after July 1999. However, even the said recognition has since been withdrawn on the recommendation by the Executive Committee and the Members of Ad-hoc Committee appointed by the Supreme Court with its meeting held on 13th March, 2007. In the terms of the recommendations of the said committee after 2007, medical graduates obtaining MBBS degrees from Kathmandu University were not granted provisional/final registration under section 12(2) of the Act of 1956 unless they will clear the screening test as prescribed.

7. The learned counsel for the petitioner submits that in view of the withdrawal of recommendation with effect from 3rd March 2007, the Kathmandu University does not fall within the Second Schedule appended to the Act of 1956.

Consequently, the MBBS degrees conferred by institutions/colleges under/affiliated to Kathmandu University after 2007 do not come within the ambit of the Schedules 1, 2 & 3 appended to the act of 1956. Since MBBS and other post graduate degrees obtained by the petitioner were in 2009, and after, they are not recognised under the Act of 1956 and the petitioner will not be permitted to practice as a Doctor of Medicine unless he clears the screening test prescribed under the Act of 1956. The learned counsel for the petitioner also relied upon the judgment of the Bombay High Court- **Sunil Kiran Noothi vs Union of India** whereby the Bombay High Court dealt with a matter under similar circumstances and allowed the writ petition directing the respondents to reconsider the claim of the petitioner for grant of NORI certificate.

8. The learned counsel for the petitioner submits that the Union of India by its affidavits filed in the present proceedings has attempted to explain and/or elaborate the reasons cited while rejecting the applications of the petitioner seeking NORI certificate. He submits that such explanation of the reasons by way of affidavit is not permissible as held by the Apex Court in the case of Mohinder Singh Gill & Anr –Vs- The Chief Election Commission reported in (1978) 1 SCC 405.

9. The Union of India represented by the Secretary, Department of Health and Family Welfare, New Delhi, filed its affidavit defending the order of rejection and maintained that the NORI certificate, in principle will not be issued in respect of medical practitioners by the Government of India except in cases of medical practitioners who are above the age of 65 years.

10. The Medical Council of India which was impleaded as party respondent No. 5 also filed its affidavit. According to the Medical Council of India unless the medical practitioners satisfy the requirements under section 12 and 13 of the Act of 1956. According to the Medical Council of India unless satisfy the condition under section 12 and 13 are satisfied, the said medical degrees will not be

recognised for the purposes of being granted a license to practice as a medical professional in/across the Union of India.

11. In order to deal with the issues in the present proceeding it would be necessary to refer to the provisions of the Indian Medical Council Act, 1956 and its objects. The Indian Medical Council Act, 1956 was legislated with the object of reconstitution of the Medical Council of India and the maintenance of the Medical Register for India and matters connected therewith. Under the scheme of the Act the Medical Council of India is constituted and there will be a Indian Medical Register under section 21 of the Act which will be register of medical practitioners and 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. Similarly under section 22 there shall be a State Medical Register to be maintained by the Medical Council incorporating the names of all the recognised medical practitioner within the state. Under the scheme of the Act unless the qualifications of a medical practitioner are recognised under present Indian Medical Council Act, 1956, no medical professional will be allowed the license to practice in India as a qualified medical practitioner. In so far as the recognition of medical qualifications obtained by the candidates from the outside the Union of India, namely, Foreign Medical Degrees/qualifications, the permissibility of such medial practitioner to legally engage medical practice in the Union of India will be subject to the provisions of the Act of 1956. The provisions governing the permissibility of Foreign Medical qualification holders to legally undertake medical practice in India are enumerated under Sections 12, 13 & 14.

12. Under section 12 of the Indian Medical Council Act, 1956 medical qualifications granted by the medical institutions in countries with which the Government of India has a scheme of reciprocity, will be recognised under the Act of 1956. Under section 13 of the Act of 1956 it is provided that the medical qualifications which have granted by certain medical institutions which

qualifications are not included in the First or Second Schedule will also be recognised under section 13 subject to fulfilment of the conditions laid therein.

13. Under section 14 of the Act of 1956 there is a special provision for recognition of medical qualifications granted by medical institutions in countries with which there is no scheme of reciprocity. Under the said section the Central Government after consultation with the Medical Council by notification in official Gazette directed that the medical qualifications granted by institutions/universities of any country outside India in respect of which there is no scheme of reciprocity in force, shall be considered to be recognised medical qualifications for the purpose of the Act of 1956.

14. For ready references relevant portions of Section 12, 13 & 14 are extracted herein below:-

“Section 12:- Recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity:-

(1) The medical qualifications granted by medical institutions outside India which are included in the Second Schedule shall be recognised medical qualifications for the purposes of this Art.

(2) The Council may enter into negotiations with the Authority in any¹[***] country outside India which by the law of such ¹[***] country is entrusted with the maintenance of a register of medical practitioners, for the settling of a scheme of reciprocity for the recognition of medical qualifications, and in pursuance of any such scheme, the Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to include therein the medical qualification which the Council has decided should be recognised, and any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification declaring that it shall be a recognised medical, qualification only when granted after a specified date.

(3) The Central Government, after consultation with the Council, may, by notification in the Official Gazette, amend the Second Schedule by direction that an entry be made therein in respect of any medical

qualification declaring that it shall be a recognised medical qualification only when granted before a specified date.

(4) Where the Council has refused to recommend any medical qualification which has been proposed for recognition by any Authority referred to in sub-section (2) and that Authority applies to the Central Government in this behalf, the Central Government, after considering such application and after obtaining from the Council a report, if any, as to the reasons for any such refusal, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein and the provisions of sub-section (2) shall apply to such notification.

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule-

(1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act. 2. The medical qualifications granted to a citizen of India:-

(a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and

(b) before the 1st day of April, 1937, by medical institutions in the territories now forming part of Burma, which are included in

¹ [Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary medical qualification granted by any medical institution outside India:

Provided further that nothing contained in the first proviso shall apply to inclusion in Part II of the Third Schedule any primary

part 1 of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country or State granting the qualification, or if he has not undergone any practical training in that country or State, he has undergone such practical training as may be prescribed.

(4) The Central Government, after consulting the Council, may by notification in the Official Gazette, amend Part II of the Third Schedule so as to include therein any qualification granted by a medical institution outside India which is not included in the second Schedule:

medical qualification granted by any medical institution outside India to any person whose names is entered in the Indian Medical

Register.

Explanation- For the purposes of this sub-section, "primary medical qualification" means any minimum qualification sufficient for enrolment on any State Medical Register or for entering the name in the Indian Medical Register.]

(4A) A person who is a citizen of India and obtains medical qualification granted by any medical institution in any country outside India recognised for enrolment as medical practitioner in that country after such date as may be specified 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 qualified the screening test in India prescribed for such purpose and such foreign medical qualification after such person qualifies that said screening test shall be deemed to be the recognised medical qualification for the purposes of this Act for that person.

(4B) A person who is a citizen of India shall not, after such date as may be specified by the Central Government under sub-section (3), be eligible to get admission to obtain medical qualification granted by any medical institution in any foreign country without obtaining an eligibility certificate issued to him by the Council and in case any such person obtains such qualification without obtaining such eligibility certificate, he shall not be eligible to appear in the screening test referred to in sub-section (4A): Provided that an Indian citizen who has acquired the medical qualification from foreign medical institution or has obtained admission in foreign medical institution before the commencement of the Indian Medical Council (Amendment) Act, 2001 shall not be required to obtain eligibility certificate under

this sub-section but, if he is qualified for admission to any medical course for recognised medical qualification in any medical institution in India, he shall be required to qualify only the screening test prescribed for enrolment on any State Medical Register or for entering his name in the Indian Medical Register.

(4C) Nothing contained in sub-sections (4A) and (4B) shall apply to the medical qualifications referred to in section 14 for the purposes of that section.

(5) Any medical institution in India which is desirous of getting a medical qualification granted by it included in Part I of the Third 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 Gazette, amend Part I of the Third 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 Part I of the Third Schedule against such medical qualification declaring that it shall be a recognised medical only when granted after a specified date.

14. Special provision in certain cases for recognition of medical qualifications granted by medical institutions in countries with which there is no scheme of reciprocity.-

(1) The Central Government after consultation with the Council may, by notification in the Official Gazette, direct that medical qualifications granted by medical institutions in any ¹[***] country outside India in respect of which a scheme of reciprocity for the recognition of medical qualifications is not in force, shall be recognised medical qualifications for the purposes of this Act or shall be so only when granted after a specified date:

²“[Provided that medical practice by persons possessing such qualifications

(a) shall be permitted only if such persons are enrolled as medical practitioners in accordance with the law regulating the registration of medical practitioners for the time being in force in that country; (b) shall be limited to the institution to which they are attached for the time being for the purposes of teaching, research or charitable work; and

(c) shall be limited to the period specified in this behalf by the Central Government by general or special order.]

(2) In respect of any such medical qualification, the Central Government, after consultation with the Council, may, by notification in the Official Gazette, direct that it shall be a recognised medical qualification only when granted before a specified date.

15. It is pertinent to mention herein that the Act of 1956 has since been repealed and new Act came in its place, namely, “National Medical Commission Act, 2019” which was enacted by the Parliament and published in the Gazette of India on 8th of August, 2019. Under the new Act a National Medical Commission has been constituted by the Central Government under section 3 of the Act comprising of Chairman. Under section 4 it is provided that the Commission shall comprise of a Chairman and ten ex-officio members and twenty two part time members. The qualification of the Chairman and the exofficio members are enumerated under section 4. Under section 5 the Central Government shall appoint a Chairman and part time members refer under section 4 and the Secretary refer to in Section 8 on the recommendation of the Charge Committee comprising of the Cabinet Secretary as the Chairperson. The recognition of medical practitioners under the Act of 2019 is provided under Chapter VI. Under section 35(8) it is provided that all medical qualification which have been recognised from the date of commencement of this Act and are included in the

First and Part 1 of Third Schedule of the Act of 1956 shall be recognised as medical qualification for the purposes of this Act. Under Chapter VI comprising of Sections 35 to Section 40. Similarly under section 36(4) all medical practitioners which are recognised before the date of the commencement of this Act are included in the Second Schedule and Part Two and Third Schedule of Act of 1956 shall be recognised medical council for the purposes of this Act. Section 40 of the Act which is relevant for the present purposes is extracted herein below:-

”40. Where the Commission deems it necessary, it may, by an order published in the Official Gazette, direct that any medical qualification granted by a medical institution in a county outside India, after such date as may be specified in that notification, shall be a recognised medical qualification for the purpose of this Act.

Provided that medical practice by a person possessing such qualification shall be permitted only if such persons qualifies National Exit Text.”

16. Under Section 40 of the New Act, where the Commission considered it necessary it shall by an order published in the official Gazette direct that any medical qualification granted by a medical institution in a Country outside India and after such a date as may be specified shall be a recognised medical qualification for the purposes of this Act.

17. In view of the facts as submitted by the learned counsel for the parties, it is not in dispute that the medical qualification of the petitioner was obtained from an institution outside the Union of India. Nor is it in dispute that the Kathmandu University is not a recognised university under Schedule 2 of the erstwhile Act of 1956. The submission of the learned counsel for the petitioner is that Kathmandu University is otherwise not included in Schedule 2 of the Act of 1956 except for a brief period and that too only to the limited extent of recognition of degrees offered by Manipal College of Science, Pokhara (which was affiliated to the

Kathmandu Medical College under Kathmandu University) at the relevant point of time. However, the said recognition was withdrawn with effect from 03-03-2007. This fact is also not disputed by the learned counsel for the Union of India.

18. Consequently, it is apparent that medical qualification degree obtained by the petitioner is not recognised per se entitling him to be recognised as a medical practitioner in any State in the Union of India and consequently his name is also not entered in the Medical Register maintained for all recognised medical professionals in terms of the Act of 1956. Upon perusal of the provisions of section 13(3) it is evident that any person who obtained foreign degree shall not be entitled for enrolment for any State Register unless he is a citizen of India and he has undergone such practical training after obtaining the qualification as may be required under the regulation enforced in the country. Under Section 13(4A) of the Act of 1956, any citizen of India who obtained medical qualification from any medical institution outside India and those recognised as medical practitioner that country, shall not be enrolled on any medical register maintained by State Medical Council or be permitted to have his name entered in the Indian Medical Register unless he qualifies the screening test in India prescribed for that purpose.

19. Under section 13(4B) it is provided that any citizen who obtained medical degree from any medical institution in any country outside India, without obtaining an eligibility certificate issued to him by the Council, then he shall not be eligible to appear in the screening test prescribed in subsection 4A.

20. Under Section 14 of the 1956 Act, it is provided that in respect of any person who possesses medical qualification from any medical institution in any country outside India and with whom the Government of India has no scheme of reciprocity, the Central Government after due consultation with the medical council may by notification in official Gazette permit such medical qualification to be recognised medical qualification or shall be so when granted after a specified date provided the following conditions are satisfied:-

(a) shall be permitted only if such persons are enrolled as medical practitioners in accordance with the law regulating the registration of medical practitioners for the time being in force in that country;

(b) shall be limited to the institution to which they are attached for the time being for the purposes of teaching, research or charitable work; and

(c) shall be limited to the period specified in this behalf by the Central Government by general or special order.

21. Under the New Act of 2019, under section 40 similar powers are conferred on the National Medical Commission constituted under section 3. Under section 40 it is provided that where the Commission deems it necessary, it may by an order publication in the official Gazette and direct that any medical qualification granted by medical institution in any country outside India after such date as may be specified in that notification, shall be recognised medical qualifications for the purposes of the Act, provided that the medical practice by such a person will be permitted only if such person qualifies National Exit Test.

22. It is also to be taken note of that the petitioner has expressly declared that he is not inclined towards medical practice either in India or abroad and at present he is only interested in pursuing his academic research in the topic for which he has been selected.

23. Upon due perusal of the relevant provisions of the Act it is seen that whether under the erstwhile Act of 1956 or the National Medical Commission Act 2019, in order to practice as a qualified medical professional in India, he has to make himself eligible by clearing the requisite test as provided for. Consequently, there is no scope for the petitioner to even attempt to engage himself in medical practice in India either in private practice employment or in Government service, unless he is declared to be so qualified under the provisions of law.

24. On the facts of the present case, the grounds cited by the respondent Nos. 1, 2 and 3 are not applicable to the petitioner as it is seen that the medical institution, namely, Kathmandu Medical College under Kathmandu University is not a recognised medical university under Government of India nor is there any scheme of any reciprocity with the Government of India in respect of Kathmandu University. Consequently, the ground of rejection that the petitioner possesses medical qualifications included in Schedule 1, 2 and 3 of the Act of 1956, does not apply to the petitioner and therefore, the same cannot be considered to be grounds germane for rejection of the petitioner's application for NORI certificate.

25. The claim of the Union of India that the department of Health and Family Welfare has clarified on the issue by holding that no NORI certificate in principle is issued to any medical professional except those beyond the age of 65 years also does not come to the aid of the respondents. The justification projected by the Government of India, Health and Family Welfare for non-issuance of the NORI certificate in principle is in view of the acute shortage of doctors in the country and that more than 50,000 Indian doctors presently serving in USA and furthermore 30% and 25% respectively of the doctors serving in U.K. and Canada are of Indian origin. So therefore, the reasons for the refusal of the Government of India towards grants of NORI certificate except in cases of applicants who are above the age of 65 years on the date of submission of the application, is in view of the acute shortage of Doctors in India and to prevent "Brain Drain of doctors from India". However, in the facts of the present proceedings, such measures expressed by the Union of India are not at all germane to the apprehension expressed towards "Brain Drain" and/or acute shortage of Doctors. This is because of the expressed bar under the provisions of the erstwhile Indian Medical Council Act 1956 as well as National Medical Commission Act 2019 itself, inasmuch as, unless the medical qualifications are recognised by the Government of India and/or the concerned doctor is able to successfully clear the screening test or National Exit Test, the person cannot be allowed to be engaged legally in medical practice in any hospital/institution throughout the Union of India, unless

so authorised by the Commission as provided for, under section 40 of the Act of 2019 by notifying such decision of the Government of India in the official Gazette.

26. As discussed above, unless such a notification is issued by the Commission and/or the Government of India permitting the recognition of medial qualification obtained from medical institution from any country outside the Union of India, in respect of such candidates/applicants like the petitioner, the policy/principle projected by the Government of India aiming to curb "Brain Drain" of qualified doctors, cannot be implemented in respect of such candidates like the petitioner. Consequently, unless the

Commission/Government of India desires to offer any opportunity to permit medical professionals like the petitioner to effectively engage in medical practice legally within the Union of India, there can be no justification to refuse the issuance of NORI certificate applied for by the petitioner, on the grounds cited. The jurisdiction sought to brought in by way of affidavits filed by the Union of India explaining the reasons for rejection of the application for "NORI Certificate" cannot be accepted. This being a public order publicly made in exercise of statutory authority cannot be construed in the light of subsequent explanations/reasons in the shape of affidavit. The Apex Court in the

"Gordhandas Bhanji" had held :-

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

This principle is reiterated by the Apex Court in the "Mohindhr Singh Gill" which is relied upon the learned counsel for the petitioner.

27. The Office Memorandum dated 31-01-2017 was issued under the erstwhile Act of 1956. It has not been submitted before this Court that pursuant to

enactment of the Act of 2019, a similar Office Memorandum has been issued by the Government of India or that this notification dated 31-01-2017 has been ordered to be extended to operate even under the new Act of 2019. In view of the above if the avowed principle of the Government of India is to utilise qualified medical professional towards service of the citizens of the country, then the policy which they are seeking to enforce by Office Memorandum dated 31-01-2017 appears to be in conflict with the provisions of the erstwhile Act of 1956 as well as the provisions of new Act 2019, insofar the recognition of medical qualifications obtained by candidates like the petitioner, from foreign countries with whom there is no scheme of reciprocity entered by the Government of India are concerned. Consequently, without the clearance of screening test/exit test such medical professionals, as per law, are not permitted to engage in medical practice legally in the Union of India. As such, unless the Government of India desires to recognise such medical qualifications as are obtained by the petitioner, for the purpose of permitting to engage him in medical practice in the service of the nation, there is no meaningful purpose served by refusal to grant the NORI certificate applied for by the petitioner inasmuch as since the petitioner has not qualified the screening/exit test he cannot be permitted to be engaged in medical practice in the Union of India as per the provision of law as it stands today.

28. In view of the discussions above, it is held that the reasons cited for non issuance of NORI certificate as reflected in the Office Memorandum dated 31-01-2017 is opposed to the very provisions of the erstwhile Act of 1956 as well as the provisions of the Act of 2019. Consequently, the same will have to be declared to be in conflict with the provisions of law and therefore, the same cannot be applied in respect of the petitioner. Since the Office Memorandum was issued in the year 2017 under the erstwhile Act of 1956 the same is not interfered with but it is left to the discretion of the respondent authorities to reflect on its applicability in respect of the applicant/petitioner in view of the discussions made hereinabove. The rejection orders dated 13-02-2019 and 25-12-2019 of the applications of the petitioner seeking "NORI" Certificate" are set aside and the

matter is remanded back to the respondent authorities to redecide afresh the grant of NORI certificate on the application(s) submitted in the year January 2019 and December, 2019 by the petitioner. While re-deciding the issue afresh, in view of what has been discussed above, the respondent Nos. 1, 2 and 3 will not rely upon the Office Memorandum dated 31.01.2017. The entire matter is directed to be completed within a period of 6(six) weeks from the date of receipt of the certified copy of the order. The writ petition is allowed to the extent indicated above. No cost.

JUDGE

Comparing Assistant