* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ CW No.5153/2003

Dr. Namit Bhargava ...Petitioner through
Mr. Sandeep Sethi with Ms. Ila Kapoor, Advocates

Versus

Medical Council of India ...Respondent through
Mr. Maninder Singh , Advocate

Date of Hearing : 9th December, 2003

% Date of Decision: 12th December, 2003

CORAM:
* HON'BLE MR. JUSTICE VIKRAMAJIT SEN

1. Whether reporters of local papers may be allowed to see the Judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **VIKRAMAJIT SEN, J.**

1. The Petitioner states that after completing his Schooling in India he had obtained admission in the Altai State Medical Institute, Russia to pursue the M.D. (Physician) course. After two years of study therein he migrated to the Tver State Medical Academy in Russia which is duly recognised by the MCI. In 1998 he was awarded the qualification of

Doctor of Medicine/M.D. (Physician). On 14.9.1998 he applied for registration with the MCI, but this was rejected for the reason that he had been initially admitted in an institution not recognised by the MCI.

2. This decision was challenged in CWP No.5343/1998 which stood decided by the Judgment of the Hon'ble Supreme Court in Civil Appeal No.2779/2000. The operative part of the Judgment reads as follows:-

> "6. In order to regulate the grant of registration to such persons who have completed their degree abroad prior to 15-3-2001, the following guidelines are placed before this Court by the Government of India:
> (A) The case of all persons who applied for registration to MCI prior to 15-3-2001 shall be dealt with according to the provisions of the Act as existing prior to the commencement of the IMC (Amendment) Act, 2001 subject to the following:
> (i) Those students who obtained degrees where the total duration of study in recognised institutions is less than six years (i.e. where a part of the study has been in unrecognised institutions, or the total length of study in a recognised institution is short of six years), shall be granted registration by MCI provided that the period of shortfall is covered by them by way of additional internship over and above the regular internship of one year. In other words, for such categories of students, the total duration of study in a recognised institution plus the internship, would be seven years, which is the requirement even otherwise.
> (ii) Where students who did not meet the minimum admission norms of MCI for joining undergraduate medical course, were admitted to foreign institutes recognised by MCI, this irregularity be condoned. In other words, the degrees of such students be treated as eligible for registration with MCI.
> (B) All students who have taken admission abroad prior

> to 15-3-2002 and are required to qualify the screening test for their registration as per the provisions of the Screening Test Regulations 2002 shall be allowed to appear in the screening test even if they also come in the categories of circumstances contained in (A)(ii) above, as the relaxation contained therein would also be applicable in their case. In other words, any person at present undergoing medical education abroad, who did not conform to the minimum eligibility requirements for joining and undergraduate medical course in India laid down by MCI, seeking provisional or permanent registration on or after 15-3-2002 shall be permitted to appear in the screening test in relaxation of this requirement provided he had taken admission in an institute recognised by MCI. This relaxation shall be available to only those students who had taken admission abroad prior to 15-3-2002. From 15-3-2002 and onwards all students are required to first obtain an Eligibility Certificate from MCI before proceeding abroad for studies in Medicine".

3. The stumbling block so far as the Petitioner is concerned is that he had made a statement that he had shifted to the Tver State Medical (recognised by the MCI) within one month of the admission to the Altai State Medical Institute (not recognised by the MCI). It is on the basis of this incorrect statement that the MCI has declined to grant him registration.

4. Mr. Sethi, learned counsel for the Petitioner has made an eloquent and fervent prayer on behalf of the Petitioner to the effect that he has already suffered immensely in that he has not been permitted to set up a medical practice. An apology for the incorrect statement has been tendered. Mr. Maninder Singh, however, states that the afore-mentioned

Judgment of the Apex Court, as extracted above, operates in rem since the Hon'ble Supreme Court had observed that all cases pending in the High Courts would be disposed of in terms of that Judgment. The other persons who had made incorrect statements pertaining to the duration spent by them in an unrecogninsed medical college had assailed the MCI decision not to grant them registration before the Hon'ble Supreme Court. The Application, however, was dismissed. Thereafter, a petition under Article 32 of the Constitution had been filed praying for the issuance of a Writ of Mandamus to command the MCI to grant/accord registration to those persons who had made incorrect statements pertaining to the period of study undergone in an unrecognised medical college. This Writ Petition also came to be dismissed. It is accordingly contended by Mr. Maninder Singh that the decision of the Hon'ble Supreme Court, especially in dismissing the Petition under Article 32 of the Constitution, would bar any consideration of similar pleas under Article 226 of the Constitution.

5. To counter this technical objection which, in fact, goes to the very roots of the controversy, Mr. Sethi has relied on Hoshnak Singh vs. Union of India and Others, 1979(3) SCC 135 and Kunhayammed and Others vs. State of Kerala and Others, (2000) 6 SCC 359. In addition to these decisions, in other similar matters, reliance had been placed by

learned counsel for the Petitioner on Indian Oil Corporation Ltd. vs. State of Bihar and Others, (1986) 4 SCC 146. In the earliest decision the Apex Court had observed as follows:

> "10. In Virudhunagar Steel Rolling Mills Ltd. v. Government of Madras, rejecting the contention that if the petition under Article 226 is dismissed without issuing a notice to the other side though by a speaking order such a dismissal would not bar the subsequent petition for same cause of action or for the same relief, it was observed that this Court in Daryao case(supra) did not mean to lay down that if the petition is dismissed in limine without notice to the opposite side it would not bar a subsequent petition. This Court only ruled that if the petition is dismissed in limine but with a speaking order which order itself indicates that the petition was dismissed on merits, the absence of notice to other side by itself would not be sufficient to negative the plea of res judicata in a subsequent petition in respect of the same cause of action. However, while negativing the contention on the facts of the case this Court reaffirmed that if the petition is dismissed in limine without passing a speaking order then such a dismissal cannot be treated as creating a bar of res judicata. Similarly, in Tilokchand Motichand v. H.B. Munshi, a majority of the Judges affirmed the ratio in Daryao case that if a petition under Article 226 is dismissed not on merits but because an alternative remedy was available to the petitioner or that the petition was dismissed in limine without a speaking order such dismissal is not a bar to the subsequent petition under Article 32. It must follow as a necessary corollary that a subsequent petition under Article 226 would not be barred by the principles analogous to res judicata. Reaffirming the view taken on this point in Daryao case, in P.D. Sharma v. State Bank of India, the preliminary objection about the bar of res judicata was negatived. It is ,therefore, incontrovertible that where a petition under Article 226 is dismissed in limine without a speaking order such a dismissal would not

constitute a bar of res judicata to a subsequent petition on the same cause of action, more so, when on the facts in this case it appears that the petition was dismissed presumably because the petitioner had an alternative remedy by way of a revision petition under Section 33 of the 1954 Act which remedy he availed of an after failure to get the relief he moved the High Court again for the relief. It would be incorrect in such a situation to dismiss the petition on the ground that the order made by the revisional authority dismissing the revision petition had the effect of merging the original order against which the revision was preferred with the order made by the revisional authority and, therefore, the challenge on the fresh cause of action to the order made by the revisional authority would of necessity be a challenge to the original order also and the petition would be barred by the principles analogous to res judicata as the first order had become final. The High Court was clearly in error in dismissing the petition on this short ground.

11.There is yet another fallacy in the approach of the High Court while dismissing the petition as being barred by the principles analogous to res judicata because the second relief claimed by the appellant in the second petition was never claimed in the first petition and is an independent and separate relief which the High Court was invited to grant if the appellant was otherwise entitled to it. The appellant, by prayer (b) of the petition, sought a direction that the respondents be ordered to pay cash compensation to the appellant for the area of land which had been taken over by the respondents. It is nobody's case that such a prayer was ever made in the first petition. In the first petition the grievance of the appellant was that the order dated March 17, 1961 made by the Chief Settlement Commissioner cancelling the permanent settlement rights conferred on the appellant in respect of his land was illegal and invalid. There was no claim for compensation. A claim for compensation was being separately pursued by the appellant and he did not invoke the jurisdiction of the High Court praying for a direction to pay him compensation. In the second

> petition from which this appeal arises there is a specific prayer for compensation and Mr. Narula, learned Counsel for the appellant, stated that the appellant is not interested in the first prayer questioning the validity of the order made by the Joint Secretary to Government of India dated September 29, 1964 affirming the order dated March 17, 1961 which was the subject-matter of the first petition. Now, if claim for compensation was not raised in the first petition and if it is specifically raised in the second petition on the allegation that as the land of the appellant has been taken over by the Government for its own use, if compensation is not paid it would be deprivation of property without compensation and would be denial of fundamental right to hold property, it is unthinkable that the present petition for this particular relief can ever be dismissed in the facts of this case on the ground that it is barred by the principles analogous to res judicata. For this additional reason the order of the High Court is unsustainable."

In Indian Oil Corporation Ltd. vs. State of Bihar and Others, **(1986) 4 SCC 146** the Hon'ble Supreme Court has made the following observations:-

> "6. We are clearly of the opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. As observed by this Court in Workmen v. Board of Trustees of the Cochin Port Trust, the effect of a non-speaking order of dismissal of s special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily

decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guesswork.

7. This enunciation of the legal position has been reiterated by this Court in Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. Workmen. The principles laid down in the two decisions cited above fully govern the present case.

8. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court to grant special leave in cases where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the

> Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforecited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition".

6. The decision, namely, Kunhayammed and Others vs. State of Kerala and Others, **(2000) 6 SCC 359** is a Restatement of the law pertaining to the dismissal of the Special Leave Petitions and their impact on other proceedings, especially the application of Article 141 of the Constitution. This case, however, does not deal with and therefore does not discuss Article 32 of the Constitution.

7. Having given the matter careful thought I am of the view that there is a significant distinction between the dismissal of a Petition in which Article 32 of the Constitution is invoked and where Special Leave to Appeal is declined under Article 136 of the Constitution. Even though a petition under Article 32 may have been dismissed in limine, and without any speaking orders, it must be assumed that the Court had looked into every averment of fact and submission of law raised in the Petition. This is not a judicial exercise akin to that under Article 136 of the Constitution. The approach in a petition under Article 32 would be

similar to that in respect of a petition under Article 226 of the Constitution. Where the Hon'ble Supreme Court finds that there are no merits in the factual matrix presented to it in the Petition under Article 32, it would be sanguine, if not improper and legally incorrect, for a High Court to entertain similar prayers. Learned counsel for the parties are in agreement that there is no precedent on this issue; indeed, none was cited before me.

8. In all humility and with the greatest respect to the Lordships of the Apex Court, I am of the view that where a false statement has been made on oath, the Petition deserves to be dismissed. This proposition has been explicitly spelt out in several decisions where extraordinary powers, such as those contained in Article 226 of the Constitution are invoked, this would always be sufficient reason for declining to exercise jurisdiction.

9. A perusal of paragraph 6 of the lead Judgment, as extracted above, would disclose that the Petitioner would ordinarily have been entitled to the recognition of his Medical Degree, provided he had undergone additional internship for the period corresponding to that spent in the unrecognised College. To say that an incorrect statement was made by the Petitioner either under depression or on wrong advice is not credible. The Petitioner has sought to abuse the relief accorded to him

on humanitarian considerations by the Apex Court, by endeavouring to put in only one month of additional Internship.

10. In these circumstances the Petition is dismissed.

December 12, 2003
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(VIKRAMAJIT SEN)
JUDGE