REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 1092 OF 2006**

% **Date of Decision** : 20th December, 2007.

NAVEEN SHARMA (DR.) .... Appellant.
Through Mr. Rajesh Gupta, Advocate.

VERSUS

MEDICAL COUNCIL OF INDIA AND ANOTHER .... Respondents.
Through Mr. Maninder Singh, Mr. Kirtiman Singh & Mr. T. Singhdev, Advocates for the respondent No. 1-MCI.

AND

LPA NO. 1226 OF 2006

DR. SUNITA KUMARI ..... Appellant
Through Mr. Vivek Singh, Advocate.

VERSUS

UNION OF INDIA & ORS. .....Respondents
Through Mr. Maninder Singh, Mr. Kirtiman Singh & Ms. Smruti Dutt, Advocates for the respondent No. 2.
Mr. Rakesh Gosain, Advocate for the respondent No. 3.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellant in LPA No. 1092 of 2006, Mr. Naveen Sharma after completing 10+2 has undergone six years of medical education in a medical university in Bulgaria. This includes five years of academic and one year of clinical clerkship. He had joined the said university in 1998 and on successful completion of the said course, was awarded degree in medicine in the year 2004.

2. The appellant, Mr. Naveen Sharma, applied for provisional registration under Section 13(3) of the Indian Medical Council Act, 1956 on 12th April, 2005, but the registration was not granted and no reason and ground for refusing registration was communicated. He filed Writ Petition (Civil) No. 3221/2006 before this Court for issue of writ of mandamus directing the respondents to grant provisional

registration to the appellant under the Medical Council Act, 1956.

3. The said writ petition was dismissed by the learned Single Judge in view of the fact that the appellant, Mr. Naveen Sharma, suffers from two disabilities viz. (i) that he has not obtained 50% marks in aggregate in Physics, Chemistry and Biology in the +2 examination and (ii) he was was not 17 years old when he had joined medical university in Bulgaria. Learned Single Judge in this regard relied upon his earlier decision in W.P.(C) No. 18630/2005 titled ***Dr. Sunita Kumari versus UOI & ORS.***, which was dismissed by the learned Single Judge on 24th March, 2006.

4. The controversy before us centers around the ratio and directions given by the Supreme Court in the case of ***Medical Council of India versus Indian Doctors from Russia Welfare Associations and Others***, reported in (2002) 3 SCC 696. The said case dealt with problem of students who have undergone courses in medicine in medical colleges in erstwhile U.S.S.R. Medical Council of India had refused to grant recognition and register these students,

who had obtained degrees from the said colleges/universities. Without registration the said graduates who have degree in Medicine from abroad cannot practice as medical practitioners in India.

5. Medical Council of India had filed a Special Leave Petition against the judgment of this Court and interim orders passed by the learned Allahabad High Court granting relief to students who had undergone and studied Medicine and obtained degrees from medical colleges in erstwhile USSR. The Delhi High Court in its judgment had granted relief to the said students, while Allahabad High Court by the interim orders had also passed certain directions in favour of the students who had undergone the said courses. The Supreme Court while hearing the matter made some observations in the interest of all concerned that Government of India should formulate an appropriate policy considering the history of the problem, need to maintain standards and also bearing in mind the human problem of students who had undergone training/studies and had spent years to obtain degrees. The Supreme Court also noticed that Section 13 of

the Indian Medical Council Act, 1956 had been amended to deal with the situation that had arisen and w.e.f. 18th February, 2002 new regulations had been sent for being published in the Gazette. The new regulations dealt with a situation where a student has proceeded outside India for study of Medicine and has successfully completed and obtained decree in Medicine which entitles him to be enrolled and practice as a medical practitioner. It prescribes requirement to qualify and pass a screening test for the purpose of registration and that a person will not be entitled to appear in the screening test if : (i) Medical College situated abroad is not recognised by the country in which an institution awarding the said qualification is situated and (ii) Indian citizen who is desirous of taking admission in an undergraduate medical course abroad on or after 15th March, 2002 should have obtained eligibility certificate from Medical Council of India stating that the said student fulfills minimum eligibility criteria laid down by the Medical Council of India for admission to MBBS course in India.

6. The Supreme Court, however, was conscious of the problem relating to students who have obtained degrees or had taken admission before the publication of the Notification or prior to 15th March, 2002. The Government was also aware of the said problem and in these circumstances placed guidelines before the Supreme Court, which have been reproduced in para 6 of the judgment and the Supreme Court exercising its power under Article 142 of the Constitution of India held that these guidelines will be applicable to all such students who are similarly situated whether they are parties before the Supreme Court or not. The guidelines read as under :-

> **"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:
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> (*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:
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> (*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 an 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.
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> (*C*) The categories of students not covered in (*A*)(*i*) and (*ii*) above and whose entire period of study has been in a medical college not recognised by MCI, will be allowed to appear in the screening test for the purpose of their registration provided they fulfil all the conditions laid down in the IMC (Amendment) Act, 2001. In other words, the qualification obtained by them must be a qualification recognised for enrolment as medical practitioner in the country in which the institution awarding the same is situated and they must be fulfilling the minimum eligibility qualification laid down by MCI for taking admission in an undergraduate medical course in India. They shall not be entitled to any relaxation."

7. As is apparent from the facts stated above, the appellant, Mr. Naveen Sharma, had taken admission in medical university-town of Pleveen, Bulgaria (Europe) on 21st December, 1998 and had

successfully completed and obtained Master's Degree in Medicine on 1st October, 2004. The said medical university was recognised by Medical Counsel of India. He will, therefore, be covered by paragraph 6 (B) of the aforesaid directions quoted above. Reading of paragraph 6 (B) shows that all students who had taken admission abroad prior to 15th March, 2002 are allowed to appear in the screening test, if they can be granted exemption in terms of paragraph 6 (A) (ii). As is clear from the wordings of the paragraphs 6(A)(ii) and 6(B), students who do not meet "minimum admission norms" of Medical Council of India for joining undergraduate course in India, shall be permitted to appear in the screening test by relaxation of the requirement of "minimum admission norms". It is also not difficult to appreciate the reason why aforesaid direction was issued by the Supreme Court. With effect from 15th March, 2002 onwards all students going abroad for medical studies have to first obtain eligibility certificate from Medical Council of India, but before the said date there was no such requirement. Students who had

gone abroad before 15th March, 2002 were admitted in Medical Colleges abroad as per their eligibility criteria which were different from those prescribed in India.

8. We may mention here that paragraph 6 (B) only grants exemption in respect of “minimum admission norms” of Medical Council of India as stipulated in paragraph 6(A) (ii). Exemption to students who had obtained degrees prior to 15th March, 2001 under paragraph 6 (A) (i) (i.e. students who had obtained degrees where duration of the study in a recognised institution is less than six years), is not available to students covered by paragraph 6(B). Thus, students covered by paragraph 6 (A) i.e. students who had obtained degrees before 15th March, 2001 were granted exemption in terms of paragraph 6 (A) (i) & (ii) and students who had taken admission abroad prior to 15th March, 2002 but had not obtained degrees prior to 15th March, 2001 were granted only one exemption i.e. under paragraph 6 (A) (ii) i.e. with regard to minimum eligibility norms.

9. As per the reply filed by the respondent-Medical Council of

India, the appellant Mr. Naveen Sharma suffers from two disabilities and, therefore, the same are not condonable under paragraph 6 (A) (ii) of the judgment of the Supreme Court. Two disabilities suffered by the appellant as per the respondent-Medical Council of India are- (i) that the appellant was 16 years and 7 months of age, his date of birth being 24th May, 1982, on the date when he took admission in the foreign university i.e. on 21st December, 1998. The second objection raised is that at +2 stage of the Senior Secondary Certificate Examination, the appellant had obtained 51, 50 and 48 marks in Physics, Chemistry and Biology, respectively. The aggregate obtained by the appellant in Physics, Chemistry and Biology is 49.66%, which is .33% less than the minimum marks prescribed i.e. 50%. Thus, he had secured slightly less than 50% aggregate marks in the aforesaid three subjects. It is stated that the appellant, therefore, suffers from two disabilities and is not covered by the relaxation granted by the Supreme Court in paragraph 6 (B) read with 6 (A) (ii).

10. We may state here that the stand of the respondent-Medical Council of India is somewhat inequitable and unjustified as the appellant was permitted and allowed to sit in the screening test conducted by the National Board of Examination, Ministry of Health and Family Welfare, Government of India in 2005 and has qualified the same.

11. The Supreme Court in the case of ***Indian Doctors from Russia Welfare Associations*** (supra) has granted exemption to students who do not meet "minimum admission norms". Supreme Court has not stated in the said directions that students who do not meet one minimum eligibility norm prescribed by the Medical Council of India, will be granted exemption and students who do not meet more than one eligibility norm, will not be granted exemption. A perusal of the guidelines shows that as far as eligibility criteria is concerned, under Clause 6(A)(ii) the expression used is "*minimum admission **norms***" in plural. Similarly, in Clause 6(B) the expression used is "*minimum eligibility **requirements**"* in plural. The Government

of India while framing the guidelines was aware that a student may not meet a single eligibility requirement or multiple eligibility requirements and therefore had expressly used the terms "***norms***" and "***requirements***" in plural. Nothing prevented the Government to state in the guidelines that exemption from eligibility norms shall be granted only in cases where a student does not meet a single or one eligibility requirement and students who do not meet two or more eligibility requirements shall be barred and are not entitled to appear in the screening test. The intention of the Government and the guidelines is clear, when it uses the two expressions in plural sense. It is well settled that intention of the legislator and the meaning at the first instance has to be gathered from the words used. When words used are clear, un-ambiguous and bear only only one meaning, the courts give effect to that meaning. Plain words explicitly used in the guidelines supports the stand of the appellants and goes against the interpretation put forward by the respondent Medical Council of India.

12. Learned counsel for the Medical Council of India has also

not been able to point out any specific order passed by the Supreme Court in which any direction or observation has been made holding that failure to meet two or more eligibility requirements will not entitle a student to benefit of Clause 6(B) read with clause 6(A)(ii) of the guidelines. Learned counsel for the Medical Council of India has referred to some orders passed by the Supreme Court dismissing the contempt applications and other applications. The said orders do not specifically state reasons, grounds and ratio which the learned counsel for the Medical Council of India, wants this court to accept. It is not possible for this Court to hold and read into the non-speaking orders dismissing the contempt applications or other applications words or directions that has the effect of modifying or clarifying it's earlier directions in ***Indian Doctors from Russia Welfare Associations*** (supra). We are bound by the decision and the directions given in the aforesaid case. We may refer here to the decision of a Single Judge of this Court in the case of ***Jishalakshi Embrandiri versus Medical Council of India***, reported in 2006 (5)

AD (Delhi) 51, wherein the learned Single Judge has observed as under:-

> "It needs to be remembered that the dismissal of a Contempt Petition does not invariably and inexorably indicate that the legal propositions on which such actions were predicated were incorrect. The only inference that can legitimately be drawn is that the Court did not view the alleged contemnors' decision or action as contemptuous, possibly because two understandings were permissible in the circumstances of the case."

13. In this regard, we may refer to the two judgments of the Supreme Court. In ***Govt. of India v. Workmen of State Trading Corpn.,*** (1997) 11 SCC 641**,** the Supreme Court has explained:-

> "The decision of this Court is virtually a non-speaking order which does not set out the facts and the circumstances in which the direction came to be issued against the Government. It is not clear as to what was the connection between the respondent-Corporation and the State Government. In the present case the Government of India had clearly averred that it had nothing to do with the State Trading Corporation and there was no relationship of master and servant between the petitioners and the Government

> of India and, therefore, the Government of India was not in any manner concerned with the closure of the Leather Garment unit of the State Trading Corporation and the consequences thereof. Mr Usgaocar rightly emphasised that the decision on which the High Court had relied could not be treated as a precedent and in support of this contention he drew our attention to a Constitution Bench judgment in the case of *Krishena Kumar* v. *Union of India*. In paras 18 and 19 the question as to when a decision can have binding effect has been dealt with. We need say no more as it is obvious from the decision relied on that it does not set out the facts or the reason for the conclusion or direction given. It can, therefore, not be treated as a binding precedent."

14. Similarly in ***Krishena Kumar v. Union of India***, (1990) 4 SCC 207 the effect of an non speaking order passed by the Supreme Court was elucidated in the following words:-

> "19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case itself required'. This was what Lord Selborne said in *Caledonian Railway Co.* v. *Walker's Trustees* and Lord Halsbury in *Quinn* v. *Leathem*. Sir

Frederick Pollock has also said : “Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.”

20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)

> “The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out

> with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi."

15. A decision is only an authority that what it actually decides. An enunciation of reason or principle on which the question before the Court has been decided is alone binding as a precedent. (See, ***Girnar Enterprises versus State of Maharashtra*** reported in (2007) 7 SCC 555) .

16. We may also refer to the judgment of a Division Bench of this Court in ***Brijesh Ranjan versus Medical Council of India*** in LPA No. 181/2004 decided on 24th January, 2005. In the said case, the candidate had merely studied for four years in a recognised college and had also not secured 50% marks. Thus, disability both under paragraphs 6(A) (i) and 6(A) (ii) had to be overcome. Moreover, learned counsel for the Medical Council of India in the said case had pointed out that the additional internship could have

covered shortfall of only one year and not for the entire period. The student had not undergone five years academic studies in medicine. Therefore the case was not covered by clause 6(B) as it grants exemptions under clause 6(A)(ii) only and not from requirements of Clause 6(A)(i) of the above guidelines.

17. The learned Single Judge of this Court in the case of ***Dr. Namit Bhargava versus Medical Council of India***, 109 (2004) DLT 404 dismissed the writ petition on the ground that there was concealment of facts and incorrect statements were made before the Medical Council of India. It was on account of false statement made on oath by the petitioner that the petition was dismissed.

18. The argument of the Counsel for the Respondent that the Court should not disturb the technical and eligibility criteria fixed by expert bodies, who seek to maintain professional excellence and standards was also raised before the Supreme Court in the ***Indian Doctors from Russia Welfare Associations*** case (supra) but after consideration of all aspects, the guidelines issued by the Government

of India were accepted and thereafter made applicable to all students similarly situated. We may again note here that the appellant, Mr. Naveen Sharma has already passed the screening test in 2005 conducted by the National Board of Examination, Ministry of Health & Family Welfare, Government of India. Therefore, to this extent it cannot be denied that the appellant has been able to obtain and perfect his knowledge in medicine and has been able to achieve proficiency in medicine.

19. Learned counsel for the respondent-Medical Council of India had also relied upon some decisions upholding the eligibility norms prescribing age limit of 17 years for admission to colleges/universities. In the said cases, the petitioners had challenged constitutional validity prescribing minimum age for admission to universities/colleges under the rules and regulations of the said universities/colleges. Universities/colleges have the right to fix the minimum age requirement for admission and the requirement that the students should be 17 years of age at the time of admission

has been upheld. But in the present case, the minimum age requirement fixed and prescribed by the University in Bulgaria was satisfied by the appellant. The decisions referred by the learned counsel for the respondent do not state that the university or college cannot frame a rule or regulation and allow admission to students less than 17 years of age. The issues and contentions raised in these writ petitions are entirely different and are not relevant for deciding the present controversy. It may be pointed out here that in the case of ***Jishalakshi Embrandiri*** (supra) the petitioner therein was less than 17 years of age at the time of admission in the foreign university and was allowed registration by the decision of this Court. It appears that the said decision has been upheld or accepted by the Medical Council of India.

20. In the case of Ms. Sunita Kumari, the appellant in LPA 1226/2006, it is stated that she did not meet the eligibility requirement as in 1995, when she had cleared 10+2 examination, she had scored 42.6% marks in aggregate as an Arts student. The

eligibility requirements of the Medical Council of India require that a student at +2 stage must have studied Physics, Chemistry and Biology and should have obtained 50% marks in aggregate. However, it may be noted that before being enrolled for Study of Medicine in Russia, Ms. Sunita Kumari underwent and had studied Physics, Chemistry and Biology in a preparatory course. Subsequently, on 1st September, 1996 after completing the preparatory course, she appeared in the eligibility test conducted by Russia Student Medical University and had qualified. The said medical college was recognised by the Medical Council of India, when she was admitted and had cleared the course in July, 2002. Thereafter in 2004 the appellant, Ms. Sunita Kumari, had appeared in the screening test organised by the National Board of Examination but failed to qualify. Medical Council of India did not at that time raise any objection. She was allowed to appear in the said screening test twice thereafter pursuant to interim orders passed by this Court but has failed to qualify. We were inclined to dismiss the Appeal filed by

Ms.Sunita Kumari as she has failed to clear the screening test on three occasions. However, learned counsel for the Medical Council of India has informed us that the earlier restriction of maximum of three attempts by a student/graduate in the screening test has been done away with. There is now, no restriction on the number of attempts that students/graduates in Medicine can have to qualify in the screening test. As this aspect is not the subject matter of the present Appeal, we do not want to comment on the amendment but observe that there appears to be a contradiction in the stand of the respondents. On one hand, fear and consequences of having incompetent and under-qualified doctors and maintaining professional excellence is projected, but the restriction on number of attempts has been done away with. Common sense dictates that an effective and comprehensive screening test can be an effective tool and mechanism to filter out un-desirable, under- qualified and in-competent candidates from the medical profession. Unlimited attempts seems to undermine the said objective.

21. In view of the findings given above, we allow the present appeal and it is held that Dr. Naveen Sharma is covered by Clause 6(B) of the guidelines. In the case of Ms. Sunita Kumari, she is held to be entitled to benefit under Clause 6(B) read with 6(A) (ii), but must comply with the guidelines/regulations as applicable including the screening test. In the facts and circumstances of the case there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

DECEMBER 20, 2007.
VKR/P