

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

+ **Writ Petition No.10133/2009**

% **Date of Decision: 31.08.2009**

Mohammad Parvez Akhtar ..... Petitioner  
Through Mr.A.R. Masoodi, Advocate

Versus

Union of India and others ..... Respondents  
Through Mr.Gaurav Duggal, Advocate for Union  
of India. Mr. Maninder Singh Sr.,  
Advocate with T. Singhdev, Advocate for  
Medical Council of India.

**CORAM:**  
**HON'BLE MR. JUSTICE ANIL KUMAR**

- |    |   |     |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | YES |
| 3. | Whether the judgment should be reported in the Digest?                | YES |

**ANIL KUMAR, J.**

\*

1. The point for determination is whether the petitioner who did his intermediate from U.P. Board in 2006 and later on in 2007 took the additional subject of Biology with practicals is eligible for admission to MBBS Course under All India Pre Medical Entrance Examination 2009.

2. Brief facts to comprehend the controversies are that the petitioner passed his High School examination through U.P. Board in 2004 and

thereafter he appeared for Intermediate examination through U.P. Board in the year 2006 and was declared successful. A year after in 2007 petitioner took an additional subject of Biology with practicals and appeared privately during the Session 2007 and qualified the additional subject of Biology. The petitioner has contended that U.P. Board High School and Intermediate Education has issued an appropriate certificate to him for Biology as well, after issuing the Intermediate Examination 2006 certificate.

3. The petitioner appeared in All India Pre Medical Entrance Examination for admission to MBBS/BDS courses and was successful by obtaining All India rank of 1435 and category rank of 1421. The petitioner asserted that he took the medical entrance examination as a OBC candidate but as per his merit he has qualified against an unreserved seat also.

4. The petitioner contended that the Intermediate examination of U.P. Board is recognized under the Bulletin of Information issued for All India Pre Medical Entrance Examination 2009 and para 8 of the Bulletin of Information detailed the qualification and qualifying examination Codes.

5. The petitioner pleads that he has a requisite certificate of Intermediate examination as specified under para 8, Code 2. After being declared successful as he obtained a good rank on merit, petitioner went for counseling as per his merit ranking against an unreserved seat which was scheduled for 12<sup>th</sup> June, 2009 to 20<sup>th</sup> June, 2009. The petitioner had been called for counseling by letter dated 5<sup>th</sup> June, 2009 and the venue for counseling was at Mumbai.

6. The petitioner contended that he participated in the counseling and a composite list of allotment of seats for MBBS course was circulated on website on 20.06.2009, however, against the name of the petitioner, a cross mark was put and he has not been allotted a seat of his choice. The petitioner also contended that no valid reason was communicated for not granting him admission to MBBS course.

7. The petitioner filed the present writ petition on 8<sup>th</sup> July, 2009 seeking direction to the respondents to include the petitioner's candidature for MBBS Course in second round of counseling scheduled with effect from 8<sup>th</sup> July, 2009 and allot a seat in the MBBS Course in the college of his choice.

8. The petitioner also contended the eligibility criteria for appearing in All India Pre Medical Entrance Examination is based on the criteria issued by Medical Council of India. The eligibility criteria given by Medical Council of India and as given in the Bulletin of Information are as under:-

BULLETIN OF INFORMATION	MEDICAL COUNCIL OF INDIA
<p><b>“(v) Qualifications and Qualifying examination Codes:</b></p> <p>Code : 01</p> <p>The Higher/Senior Secondary Examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher/Secondary Examination after a period of 12 years study, the last two years of such study comprising Physics, Chemistry, Biology (which shall include practical texts in these subjects) and Mathematics or any other elective subject with English as prescribed by the National Council of Education Research and Training after introduction of the 10+2+3 education structure as recommended by the National Committee on Education.</p> <p style="text-align: center;">OR</p> <p><b>CODE : 2</b></p> <p><b><i>The Intermediate/Pre-degree Examination in Science of an Indian University/Board or other recognised examining body with Physics, Chemistry,</i></b></p>	<p><b>“CHAPTER II</b></p> <p><b>ADMISSION, SELECTION, MIGRATION AND TRAINING:-</b></p> <p>4. Admission to the Medical Course – Eligibility Criteria: No candidate shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) course until:</p> <p>(1) He/she shall complete the age of 17 years on or before 31<sup>st</sup> December of the year admission to the MBBS course;</p> <p>(2) He/she has passed qualifying examination as under:-</p> <p>(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of years study, the last two years of study comprising of physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the</p>

<p><b><i>Biology (which shall include practical test in these subjects) and English.</i></b></p> <p>OR</p> <p>CODE : 03</p> <p>The Pre-professional/Pre-medical Examination with Physics, Chemistry, Biology &amp; English after passing either the Higher Secondary Examination or the Pre-University or an equivalent examination. The pre-professional/Pre-medical examination shall include practical test in these subjects.</p> <p>OR</p> <p>CODE : 04</p> <p>The first year of the three years' degree course of a recognized University with Physics, Chemistry and Biology including practical tests in these subjects provided the examination is a University Examination and further that he/she has passed the earlier qualifying examination with Physics, Chemistry, Biology and English.</p> <p>OR</p> <p>CODE : 05</p> <p>B.Sc. Examination of an Indian University provided that he/she has passed the B.Sc. Examination with not less than two of the subjects Physics, Chemistry, Biology (Botany, Zoology) and further than he/she has passed the earlier qualifying examination</p>	<p>National Council for Educational Research and Training after the introduction of the 10+2+3 years educations structure as recommended by the National Committee on education;</p> <p>Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges;</p> <p>OR</p> <p><b><i>(b) The intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject;</i></b></p> <p>OR</p> <p>(c) The pre-professional/pre-medical examination with Physics; Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university or an equivalent examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject;</p> <p>OR</p> <p>(d) The first year of the three</p>
---	---

<p>with Physics, Chemistry, Biology and English</p> <p style="text-align: center;">OR</p> <p>CODE : 06</p> <p>Any other examination which is scope and standard (Last 02 years of 10+2 Study comprising of Physics, Chemistry and Biology; which shall included practical test in subjects.) is found to be equivalent to the Intermediate Science Examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical tests in each of these subjects and English.</p> <p>Provided that to be eligible for competitive entrance examination, candidate must have passed any of the qualifying examinations as enumerated above. Provided also that to be eligible for competitive entrance examination the candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination. In respect of the candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the marks obtains in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% for General Candidates.</p> <p>Provided further that the students of Indian nationality educated</p>	<p>years degree course of a recognized university with Physics, chemistry and Biology including a practical test in three subjects provided the examination is a “University Examination” and candidate has passed 10+2 with English at a level not less than a core course;</p> <p style="text-align: center;">OR</p> <p>(e) B.Sc examination of an Indian University, provided that he/she has passed the B.Sc examination with not less than two of the following subjects Physics, Chemistry, Biology (botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects – Physics, Chemistry, Biology and English.</p> <p style="text-align: center;">OR</p> <p>(f) Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English.</p> <p><b>Note:</b></p> <p>The pre-medical course may be conducted either at Medical college or a Science Course.</p> <p>Marks obtained in Mathematics are not to be considered for admission to MBBS Course.</p> <p>After the 10+2 course is</p>
--	---

<p>aboard seeking admission into medical colleges in India must have passed in the subjects of Physics, Chemistry, Biology and English upto the 12<sup>th</sup> standard level with 50% marks and their equivalency determined as per regulation of the Medical Council of India and the concerned University. If a candidate does not fall within the qualifications prescribed as per Code number 01-06 he/she should furnish complete details to determine eligibility.”</p>	<p>introduced, the integrated course should be abolished.”</p>
---	--

9. According to the petitioner, he fulfills the eligibility criteria set out by Medical Council of India and as stipulated in the Bulletin of Information and as he is entitled for admission according to his merit ranking. The petitioner has contended that though he is entitled for admission but he was verbally communicated that since he had not studied Biology during the last two years of study in the Intermediate course, therefore, he cannot be allocated a seat in the MBBS course. The petitioner also contended that on the basis of similar certificates as possessed by the petitioner, many candidates have participated in Pre Medical Entrance Examination and no such objection has been raised in case of such other candidates, as has been raised in case of petitioner.

10. The writ petition is contested by the respondent/Medical Council of India who filed a short affidavit contending *inter alia* that Medical Council of India (MCI) is a statutory authority created and constituted by Central Government under an Act of Parliament, namely, Indian Medical Council of India Act, 1956. According to the MCI, it has been given the responsibility of maintenance of highest standard of medical education. The MCI has framed various regulations with the prior approval of the Central Government for laying down the minimum norms and requirement. It is contended that Regulations of MCI on various occasions put to judicial scrutiny and the Supreme Court through its various pronouncements has held that the regulations as framed by the MCI with the prior approval of the Central Government are statutory in character and are binding and mandatory.

11. Relying on Chapter II, relating to admission, selection, migration and training, it is contended that to be eligible, a candidate should have undergone 10+2 examination, i.e., 12 years of study, where the last two years of study should comprise of Physics, Chemistry, Biology and Mathematics or any other elective subject with English. It has been asserted that a candidate for PMT examination is obliged not only to



qualify his senior secondary examination with Physics, Chemistry, Biology and English but should also obtain a minimum 50% marks in Physics, Chemistry, Biology subjects taken together and having passed English as one of the compulsory subjects. Relying on the regulations for admission, it is contended that a student must have undergone regular and co-terminus/simultaneous teaching and training in the subjects of Physics, Chemistry and Biology in his/her Senior Secondary Examination (10+2) and last two years of study should comprise of these subjects as regular subjects and not as optional subjects, passing of which is mandatory for a candidate to be treated as having passed the said senior secondary (10+2) examination, as per the statutory regulations.

12. The Medical Council of India has asserted that study of Biology should be for a period of two years in 11<sup>th</sup> and 12<sup>th</sup> standards, in 10+2 pattern and since the petitioner has not undergone regular study of Biology in 11<sup>th</sup> and 12<sup>th</sup> standard in all the science subjects, especially Biology, he is not eligible to get admission to the MBBS course.

13. The respondent No.3 also contended that there is a qualitative difference between undergoing studying and training as a regular

student and securing qualification as a private student without regular teaching and training throughout the prescribed duration in the required seats. According to MCI, the entire scheme of statutory regulation of the MCI clearly lays down that the candidate concerned has to undergo regular teaching and training in 11<sup>th</sup> and 12<sup>th</sup> standard Admission in medical courses in the All India quota is the exclusive responsibility of the Director General of Health Services, Government of India and for the State quotas it is the competent State/University authorities. From the total seats of all the medical colleges all over the country, as per the directions of the Supreme Court, 15% of those seats are to be filled up on all India basis. Relying on para 8 of the Bulletin of Information for All India Pre Medical Entrance Examination 2009, it is contended that the merit list is to be prepared on the basis of clauses of the regulation on Graduate Medical Education, 1997 under which a candidate for a PMT examination is obliged not only to qualify his senior secondary examination with Physics, Chemistry, Biology and English but must also obtain 50% marks taken together in three subjects and he/she should have undergone two years of study in these subjects.

14. Relying on the decision in *Raghukul Tilak v. Union of India & Another* in W.P.C. No.12487/2006, it is contended that a candidate who had passed 12<sup>th</sup> examination conducted by Board of Secondary

Education, Rajasthan, in the year 2000 with the subjects of Physics, Chemistry, Mathematics, Hindi, English and Computer Science as an additional subject but who had not studied Biology for two years was held to be not eligible though the candidate had appeared in All India PMT Examination in the year 2006 and had secured a rank of 1600. Reliance has also been placed on the decision of the Division Bench in LPA No.2033 of 2006 titled Raghukul Tilak v. Union of India and another decided on 31<sup>st</sup> May, 2007 reported as AIR 2007 Delhi 237. It is also contended that in a Special Leave Petition (Civil) NO.13571/2007 titled Raghukul Tilk v. Union of India and Others was filed against the decision of the Division Bench which was also dismissed.

15. The MCI also contended that qualification as enunciated in the Information Bulletin issued by Central Board of Secondary Education for the entrance examination are in conformity with the statutory regulations of the MCI and since the petitioner has not undergone regular teaching and training/practical in the subject Biology as part of his regular course curricula for classes 11<sup>th</sup> and 12<sup>th</sup> along with Physics and Chemistry, therefore, he is not eligible for admission to MBBS course.

16. A counter affidavit has also been filed on behalf of Director General of Health Services taking the similar pleas as has been raised by the Medical Council of India besides the plea that at the time of applying for All India Pre Medical/Pre Dental Examination to Central Board of Secondary Education which conducts the entrance examination, the candidates are not required to submit all the originals or photocopy of the certificate and mark sheet and the eligibility of the candidate is examined only at the time of counselling on the basis of original documents brought by the candidates. It was contended that the petitioner appeared for counselling on 20<sup>th</sup> June, 2009, however, while verifying his education certificate, it was found that the petitioner did not possess the qualification required for admission to MBBS/BDS course as fixed by MCI. It is contended that his case was also examined by the Allotment Committee Members with reference to aforesaid regulations of MCI and he was not allowed to attend the counselling as he had not studied Biology subject for a mandatory period of two years.

17. The pleas and contentions raised by the respondents in the counter affidavits were refuted by the petitioner who filed the rejoinder affidavit contending *inter alia* that the petitioner had applied under clause 8 (V) Code 2 and he is fully eligible as the eligibility is *pari materia* with Regulation 4(2)(b) of Medical Council of India Regulation.

It is contended that the regulation framed by Medical Council of India qua the rules published do not bar a candidate on the basis of qualifying intermediate examination with Biology as an additional subject through U.P. Board. The petitioner also contended that after passing the intermediate examination, he had opted for an additional subject, Biology in the year 2007 and the course of additional subject is co-extensive and rather same can be compared to what is taught during regular study of intermediate. The petitioner pointed out that he underwent the practical along with the regular students of intermediate course and he did not joint any other course during the year 2007. The petitioner also contended that CBSE Board offers the choice of all the subjects, namely, Physics, Chemistry, Mathematics and Biology during the course of two years study, however, in U.P. Board intermediate education, the Mathematics with Biology is not permitted and therefore for the students to become eligible to appear in the entrance test of medical education, he/she is bound to undergo the studies of additional subjects, namely, Biology for a period of one year along with the practical tests conducted by the respective institutions. The petitioner categorically asserted that the course of Biology prescribed by the intermediate Board as additional subject is same for the Biology as a regular subject and, therefore, the petitioner is eligible under Rule 8 (v) Code 2.

18. Learned counsel for the petitioner also relied on Harsh Pratap Sisodia v. Union of India and others, (1999) 2 SCC 575 to contend that the petitioner is eligible for admission to MBBS course. The learned counsel also relied on (1979) 1 SCC 572, State of Kerala v. Kumar T.P. Roshana and another ; (1980) 2 SCC 768, Dr. Jagadish Saran and Others v. Union of India; (1993) 3 SCC 332, Sharwan Kumar and others v. Director General of Health Services; another and (1995) 4 SCC 104, State of Tamil Nadu and Another v. Adhiyaman Educational & Research Institute and Others and (1976) 3 SCC 334, The Regional Manager and Another v. Pawan Kumar Dubey in support of pleas and contentions on behalf of the petitioner.

19. The learned counsel for the parties were heard in detail and the writ petition, replies to show cause notices and rejoinder and documents have been perused and considered in detail. Learned counsel for the respondents has relied on (2001) 8 SCC 427, Medical Council of India v. Sarang and Others to contend that in matters of academic standards, Court should not normally interfere or interpret the rules and subject matters should be left to the experts in the field. Referring to Harsh Pratap Sisodia (*supra*) relied on by the petitioner, it is contended that the Supreme Court in that case had decided the objection of Maharashtra State regarding passing the qualifying

examination “in one and the same attempt” having no application to the candidates who qualify the entrance examination against 15% all India quota. The Supreme Court had not decided that a candidate who does not undergo two years of regular study for an additional subject and who undergoes only one year of studies of a subject as an additional subject will be eligible under the regulations of medical Council of India. Therefore, on the basis of the ratio of said precedent, it cannot be held that the petitioner is eligible. Learned senior counsel, Mr. Singh, also relied on (1991) 4 SCC 139, State of U.P. and Another v. Synthetics and Chemicals Ltd. and another to contend that a decision which is not express and is not founded on reason nor proceeded on consideration of issue, cannot be termed to be a law declared to have a binding effect as is contemplated under Article 141. Reliance was also placed by learned senior counsel on AIR 1989 SC 38, Municipal Corporation of Delhi v. Gurnam Kaur to contend that pronouncements of law which are not part of the ratio *decidendi* are classed as *obiter dicta* and are not authoritative.

20. In State of Kerala v. Kumar T.P. Roshana and another (*supra*) relied on by the petitioner, it was held by the Supreme Court that the selection criteria on comparison of marks obtained by candidates in different qualifying examination conducted by different university with

different standards, question papers and set of examination, will not be discriminatory so as to violate Article 14. The Supreme Court held that university wise allocation of seats in admission to medical college within the State is not discriminatory. The Supreme Court had rather held that benefit of reliefs granted by court should not be extended only to those affected persons who had moved the court but should be extended to those affected persons also who did not move the court. The ratio of the case relied on by the petitioner does not advance the plea of the petitioner that he is eligible for admission to the course of MBBS despite not having qualified Biology as regular subject with two years of study but qualifying the subject in one year as a private student.

21. In *Dr, Jagadish Saran and Others (supra)*, the dispute was whether 70% of the reservation of seats by Delhi University in its medical courses was excessive or not. The Supreme Court had, however, held that no definite decision could be taken on account of scanty, fragmentary and unsatisfactory material given by the petitioner despite the sufficient opportunities given to the parties. The Supreme Court, however, directed the University to appoint a Committee who was bound to investigate in depth the justification for and quantum of reservation at the Post Graduate level from the angle of equality of opportunity for every Indian taking into consideration other



constitutionally relevant criteria. The ratio of said judgment is also of not any help to the petitioner. The sole question in the case of petitioner is whether he is eligible or not for admission to the course of MBBS despite not having undergone the study of the subject biology for two years with practical. The petitioner has studied biology as an additional subject for one year only.

22. In *Sarwan Kumar (supra)*, the Supreme Court had approved the scheme prescribing the procedure to be followed for allotment of 15% All India Quota for admission to MBBS/BDS courses in various colleges in the Country. In *State of Tamil Nadu and another (supra)*, the Supreme Court had held that the State Acts cannot lay down standards and requirements higher than those prescribed by the Central Act for technical educational institution and cannot deny situations/seats to applicants on the ground that they do not fulfill such higher standards and requirements. In this case, the short question involved was whether after coming into force of All India Council for Technical Education, the State Government had the power to grant and withdraw permission to start a technical institution as defined in the Central Act. It was held that if the supervision on the basis of Central Statute on one hand and of the State Statute on the other, is inconsistent and repugnant to each other, then the Central Statute will prevail and de-

recognition of the State government or dis-affiliation by the State University on grounds which are inconsistent with those enumerated in the Central Statute will be inoperative. In *The Regional Manager and Another v. Pawan Kumar Dubey (supra)* relied on by the petitioner, the Supreme Court was concerned with the question of reversion from the post of Senior Station In-charge to a substantive post of Junior Station In-charge which order was passed as a measure of punishment. The Supreme Court had elaborated about the ratio *decindedi* of a case, holding that it is the rule deducible from the application of law to the facts and circumstances of a case which constitute its ratio *decidendi* and not some conclusion based upon facts which may appear to be similar. It was held that one additional or different fact can make a world of difference become conclusion in two cases even when the same principles are applied in each case to similar facts. The ratio of any decision must be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It must be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme had observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* (AIR 2004 SC 778) had also held that a decision cannot be relied on without considering the factual situation. In the same judgment the Supreme Court also observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In *P.S.Rao Vs State*, JT 2002 (3) SC 1, the Supreme Court had held as under:

". There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

23. The petitioner has contended that under Code 2 of clause 8 (v) of Bulletin of Information, the eligibility condition of study of last two years of Biology, Physics, Chemistry is not provided. What is provided is that a candidate should have obtained his intermediate/pre degree examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which should include practical tests in these subjects and English. It is asserted that two years of study as provided in Code 1 is not provided in Code 2 and therefore, this condition cannot be read in Code 2 of clause 8 (v) of Bulletin of Information. The learned counsel has contended that the U.P Board from where the petitioner has done his intermediate had not permitted Mathematics with Biology and, therefore, the petitioner had Physics, Chemistry and Mathematics in 2006 when he passed the intermediate examination and, thereafter he studied Biology as a regular subject and attended the practical and qualified the Biology also and was awarded a certificate to that effect in 2007.

24. Under Code 1 of clause 8 (v) of Bulletin of Information which contemplates higher/senior secondary examination or the Indian school certificate examination equivalent to 10+2 higher/senior secondary examination after a period of 12 years study, the last two years study

should be of Physics, Chemistry, Biology which should also include practical tests. A student who had done 10+2 with Physics, Chemistry, Mathematics, Hindi and English and thereafter who had studied Biology as an additional subject and had qualified the additional subject in the regular examination and not in a supplementary examination, a dispute had arisen about his eligibility for admission to the MBBS course as he had not studied Biology for two years in the case of Raghukul Tilak v. Union of India and Anr, MANU/DE/9184/2006. The plea raised was that the insistence on the last two years of study in each of the subjects is not essential which point of view was also supported by Central Board of Secondary Education. However, Medical Council of India had insisted on last two years study in each subject being essentially on the premise that such two years study necessarily assimilates with periodic practicals, evaluation of the student and his aptitude in such activity, which is vital for a student of medicine. The Medical Council of India had also submitted that such insistence is not an empty or ritualistic exercise but a matter of standards having regard to the nature of medical education. The Single Judge of this Court relying on the decision of the Supreme Court in State of Tamil Nadu & Anr v. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104 and other precedents had noted the need to adhere to standards, and not to permit deviations, even statutory deviations prescribed by academic bodies, other than the

technical or expert organization empowered to do so. The Supreme Court had held:-

“.....As pointed out earlier, so far as technical institutions are concerned, the norms and standards and the requirements for their recognition and affiliation respectively that the State Government and the University may lay down, cannot be higher than or be in conflict and inconsistent with those laid down by the Council under the Central Act. Once it is accepted that the whole object of the Central Act is to determine and coordinate the standards of technical education throughout the country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements etc will have to be uniform throughout the country. Uniformity for the purposes of coordinated and integrated development of technical education in the country necessarily implies a set of minimum standards the fulfillment of which should entitle an institution and its alumni, titles, degrees and certificates to recognition anywhere in the country.”

25. In *Raghukul Tilak (Supra)* it was held that though the interpretation that a student who does not undergo training for two years in any of the three subjects but who qualifies in some subsequent additional or supplementary examination would also be eligible, appears to be tenable, on a textual interpretation of Code 1 and Code 6 of clause 8 (v) of Bulletin of Information. However on wider consideration of other codes such construction is impermissible as proviso to Code 6 clause 8 (v) dealing with students of Indian

nationality who study abroad, it is apparent that they should have qualified in all the three subjects after having studied up to 12<sup>th</sup> standard in those subjects after having studied for two years and consequently the continuous nature of education for last two years is essential in the facts and circumstances. In the circumstances the interpretation placed by MCI was given preference to the other interpretations and construction and such a candidate was held to be not eligible for admission to MBBS course who had not studied Biology for two years with practical. In an appeal filed against the said order, the Division Bench in AIR 2007 Delhi 237, Raghukul Tilak v. Union of India had held that the candidate did not fulfill the eligibility criterion mentioned in Code 1 of clause 8 (v) which contemplated that the student should have studied Biology in last two years before he qualified Senior Secondary Examination. The candidate Raghukul Tilak had not studied Biology for two years, therefore, it was held that he did not meet the eligibility criterion and merely passing in the subject of Biology in Class 12 does not satisfy the eligibility criterion. The decision of the Division Bench was upheld by the Supreme Court and the Special Leave Petition No.13571/2007 was dismissed by order dated 17<sup>th</sup> August, 2007.

26. The plea of the petitioner that in Code 2 of clause 8 (v) of Bulletin of Information, two years of study in Biology is not specifically provided and so it should not be read into it is also not acceptable as on the basis of examination such distinction should not be carved out. Classification on the basis of type of examination i.e two years continuous study in one particular examination and not insisting for two years study in respect of another examination will not be permissible. The learned counsel for the petitioner has also contended that in the intermediate examination from the U.P Board a candidate is not allowed to take Mathematics with Biology. Therefore, the petitioner had taken Physics, Chemistry and Mathematics, he was not allowed to take Biology and therefore, after qualifying intermediate examination in 2006, he took Biology as an additional subject and qualified the same with practical in 2007 as a regular subject. This is not disputed that a candidate is entitled to take Physics, Chemistry and Biology even for the intermediate examination. Such a candidate who opts for biology in preference to Mathematics, study Biology for two years with practical. Therefore, if the petitioner wanted to join MBBS course he should have opted for Biology as a regular subject with a study of two years. If MCI insists on last two years study in each subject being essential on the reasoning that such study necessarily assimilates with periodic practical and evaluation of students in such activity is vital for the study of medicine, such insistence cannot be termed as an empty or



ritualistic experience but is a matter of maintaining standard having regard to the nature of medical education and it cannot be ignored on the grounds as has been alleged by the petitioner. If in Code 1 of clause 8 (v) a two years study in each subject is required, then for the same reasoning the two years study of each subject is necessary even under other Codes of clause 8 (v) and has to be read in Code 2 of clause 8 (v) also. This is not the case of the petitioner that none of the students who opted for subject Biology in intermediate examination were required to study Biology for two years. The petitioner had an option to study Biology with Chemistry and Physics for two years with practical, however, he opted not to study Biology for two years and instead took Mathematics as a subject for two years study. Had the petitioner opted for Biology as a regular subject he would have been eligible. The requirement of MCI cannot be whittled down or diluted on account of conscious act of the petitioner.

27. A Single Judge of this Court in *Rubab v. Medical Council of India*, W.P (C) No.2985/2008 decided on 5<sup>th</sup> November, 2008 had held that a candidate who passed the intermediate examination with subjects Physics, Chemistry and Mathematics as a regular candidate and thereafter, passed the intermediate examination in subject Biology including practical test which was permissible by the U.P Board, shall

not be eligible for admission to M.B.B.S course relying on Raghukul Tilak (Supra) by the Single Judge and the Division Bench.

28. Therefore, for the foregoing reasons the decision of the respondents not to admit the petitioner in the MBBS course despite having a merit ranking in the entrance examination on the ground that, he is not eligible as he had not done Biology for two years in intermediate examination, cannot be faulted.

30. The writ petition is, therefore, without any merit and it is dismissed. Parties are, however, left to bear their own costs.

**August 31, 2009**  
'Dev'

**ANIL KUMAR, J.**