

PETITIONER:
MEDICAL COUNCIL OF INDIA

Vs.

RESPONDENT:
SILAS NELSON AND ORS.

DATE OF JUDGMENT 14/05/1993

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
VENKATACHALLIAH, M.N.(CJ)
THOMMEN, T.K. (J)

CITATION:
1994 AIR 777 1993 SCR (3) 787
1993 SCC (3) 184 JT 1993 (3) 455
1993 SCALE (2)961

ACT:

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Indian Medical Council Act, 1956-Ss. 12, 14-Migration Rules-Regulation V(e)-Migration of Medical student of unrecognised college in Dar-es-Salam to recognised medical college in India-Equivalence of the courses in the two colleges-Held, Medical Council the main authority to decide on these questions-Course of study, and not individual cases, relevant for grant of permission for migration-On facts, held, migration rightly refused.

HEADNOTE:

In 1989, respondent 1 and his sister applied for migration from Mumbili Medical College in the Faculty of Medicine, affiliated to the University of Dar-es-Salam to a recognised medical college in India. The Medical Council of India turned down this application. A writ petition was filed in the Court at Jabalpur. The High Court directed that the appellant and other authorities consider the case of the petitioners. Thereafter the Executive Committee of the Medical Council reconsidered the case on 20th August, 1991. It found that the grounds for migration were not sufficient; that it was the course of study already undergone vis-a-vis that being taught in the medical college in which migration was sought, and not the facts of individual case, which was relevant. Also the candidate had not furnished enough materials to make the comparison. The Council therefore rejected the application.

A review petition and contempt petition filed in the High Court were dismissed.

Thereupon, in a miscellaneous petition filed on the same grounds seeking admission in the second year or the 1 year professional MBBS Course at Medical College, Jabalpur the High Court directed that the petitioners be given provisional admission. The petitioners however, did not produce the required documents and the college did not provisionally admit them. In an interlocutory application, the High Court permitted one of the petitioners to withdraw herself from the petition and directed that the other petitioner

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(respondent I before this Court) he granted provisional admission on his filing necessary forms and depositing the fees without insisting on the Production of any other certificate or testimonials or syllabus (of Dar-es-Sala in University

On fear of contempt, the Dean had to comply with this order. On an application before it, this Court stayed the interim order and requested the High Court to dispose of the main petition expeditiously.

The High Court allowed the %Tit petition and quashed the resolution dated 20th August, 1991. refusing migration, holding that there was no application of mind by the Council.

On appeal before this Court, it was contended that the High Court erred in directing admission of respondent in a recognised medical college from an unrecognised medical college by way of migration-, that Regulation V had been misread and that not having under-gone study in a recognised medical college nor having passed the first professional examination, he could not be admitted to the second year; that he had failed in anatomy and had not sat for his supplementary examination and had therefore ceased to be a student of Dar-es-Salam University and that the first year course at Dar-es-Salam University and in India were not equivalent. Equivalence in any case, it was urged, is to be decided by an expert body and is not in the domain of the Court.

For respondent 1, it was argued that the self-contradictory stand of the Council on equivalence had led to the High Court deciding the issue; that equity was in his favour; that he had in any event passed his pre-medical test in 1991; and that he belongs to a scheduled tribe.

Allowing the appeal, this Court,

HELD: 1. The Medical Council has come to the correct conclusion that there cannot be migration from unrecognised institution to a recognised medical college. (799-G)

Dar-es-Salam University has not been recognised as provided in the Indian Medical Council Act, 1956.(7%-A)

2. The High Court does not have the necessary expertise to determine equivalent. The Medical Council is the main authority in this respect. (799-C)

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3. what is material for grant of permission for migration is the course of study which a student has undergone vis-a-vis the courses being taught in the medical college in which the migration is sought, and not the individual case. (799-D)

The material placed before the Council was not sufficient to decide equivalence.

4. The concerned authority is to verify the disputed factual position concerning his performance in the 1991 pre-Medical test and decide on considering him for admission for the academic year 1993-94. (800-E-G)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2221 of 1993.

From the Judgment and Order dated.5.5. 1993 of the Madhya' Pradesh High Court in M.P. No. 4420 of 1991.

Harish N. Salve and L.R. Singh for the Appellant.

Anoop Choudhary, A.K. Sanghi, S.V. Deshpande and S. K. Agnihotri for the Respondents.

The Judgment of the Court was delivered by

Mohan, J, Leave granted in SLP filed by Indian Medical Council, Jabalpur.

All these appeals are dealt with under a common judgment since they arise out of the same judgment passed in Misc. Petition No.4420 of 1991 by the Madhya Pradesh High Court, Jabalpur Bench.

One Dr.Nelson ,father of respondent1 was serving in Madhya Pradesh State Public Health in the Department of Surgery in the Medical College at Jabalpur. His wife, Dr. (Mrs.) Shobha Nelson was also working as a Lecturer in the Department of Obstetrics and Gynecology in Medical College in a purely temporary capacity.

Dr.Nelson applied for foreign assignment.He was selected for the same. Therefore. a request was made by the Government of India (Department of Personnel and Administrative Reforms) vide its letter dated 2nd of January. 1975

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requesting the State Government to spare the services of Dr . S.K. Nelson for foreign assignment with Zanzibar Government. The Under Secretary to the Government of Madhya Pradesh, Department of Public Health and Family Planning replied on 15.4.1975 that it was not possible for the State Government to spare his services. However, Dr. Nelson proceeded on two months' vacation with effect from 1.5.75.He wrote a letter to the Dean of Medical College Jabalpur that he was proceeding, on long leave owing, to unavoidable family circumstances. Even after the expiry of the period of leave he did not rejoin the post. His request for further extension of leave was rejected. Notwithstanding the same Dr. Nelson and his wife proceeded to Tanzania and the first respondent, Silas Nelson, also accompanied them.

It also requires to be mentioned in passing that a request was made to the Government of madhya Pradesh to spare the services of Dr. Shobha Nelson. It was pointed out by tile State Government that she being ;A temporary servant she had no lien and she will have to resign the State service before joining her duties in Zanzibar. She also absented unauthorisedly and proceeded to Tanzania along with her husband. The first respondent claimed to have passed G.C.E. 'O' level as well as 'A' level examinations from the University of London conducted by the Education Council of the Government at Dar-es-Salam in Tanzania. He also claimed that he had obtained credits in 'A' level in three subjects i.e. Biology, Physics and Chemistry and 'O' level in six subjects i.e. Biology, Chemistry, English language. English Literature, Mathematics and Physics. On this basis he claimed that he was entitled to admission in any Medical College in India. According to him these examinations are considered to be equivalent qualifying examinations and pre-requisite for admission to any Medical College. It was also stated that Rani Durgawati University of Jabalpur had given an equivalence certificate. He obtained admission in Muhmbili Medical College in the Faculty of Medicine. which is affiliated to the University of Dar-es-Salam, in the year 1989. lie had completed one year at the same college and University. Thereafter he was pursuing his study in the second year. Having regard to the fact that he had studied the subjects in Anatomy, Physiology, Biochemistry, Preventive and Social Medicine including, Behavioural Science and Biostatistics, Medical Psychology and Developmental Studies and Medical Surgery, he had undergone a wider course. Therefore, according to him, he possesses the eligibility criteria for admission to the MBBS Degree Course at Jabalpur.

A request was made by the father of the first respondent to

nominate the first respondent to MBBS Course directly under Central Government quota. This request related not only to the first respondent but also his sister. However, the Central Government advised Dr. Nelson to approach the Medical Council of India

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and the concerned University in Jabalpur seeking their concurrence to the migration of his two children from the University of Dar-es-Salam, Tanzania to Medical College in Jabalpur.

On 20th December, 1989, Dr. Nelson approached the appellant, Medical Council of India (hereinafter referred to as the Council) for grant of no objection to the transfer. This request was turned down on 12.1.90 as migration was not permissible under the Rules. The position was further made clear by the letter of the appellant dated 28.12.90.

Aggrieved by this the first respondent and his sister Kumari Divya Nelson filed Writ Petition Misc. Petition No. 2535 of 1990 before the Madhya Pradesh High Court at Jabalpur. The prayer was for a writ of mandamus to direct the respondents to grant admission to them to the 2nd year of MBBS Degree Course at Medical College, Jabalpur. It was contended that the Council had not authority to object or refuse the issue of no objection certificate since its primary function is to prescribe minimum standards of medical education. It is the University alone which should be concerned about the admission.

The High Court by its judgment dated 12.7.91 allowed the writ petition. It directed the appellant and other authorities to consider the case of respondent 1 and his sister within a period of two months for their admission in the Medical College, Jabalpur in the light of clause 'E' of the mandatory recommendations approved under Section 33 of the Indian Medical Council Act, 1956. It was also held that though the Council had considered the case of the candidates yet it had not looked into the individual merits regarding their eligibility for transfer to Medical College, Jabalpur which affiliated to Rani Durgawati Vishwa Vidyalaya, Jabalpur. Besides the impugned letter of the Council does not show any application of mind as it is not speaking order.

In complete with the above directions the Executive Committee of the appellant (Council) reconsidered the case on 20.8.91. The question was whether the migration of the respondent on individual merit to Medical College, Jabalpur under clause v 'e' of the Migration Rules was permissible. It was concluded that the migration could not be allowed since the grounds were not sufficient for such migration. It was also of the view that the facts stated for considering the individual case on merits were not relevant. What is important to be considered is the course of study the student had already undergone vis-a-vis the course being taught in the Medical College in which the migration is sought. The candidate had not also finished enough materials to make comparison with

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the course of study conducted in Medical College at Jabalpur. For these reasons the request for migration was rejected. The same was reiterated by a letter dated 4.1.92. After this, a review petition was filed to recall the order dated 12.7.91 of the High Court. However the review petition was dismissed by the High Court. An application for contempt was also dismissed. Thereupon Misc. Petition No. 4420 of 1991 came to be filed seeking admission in the 2nd year or the 1st professional M.B.B.S. Course at Medical College,

Jabalpur on the same grounds as were alleged previously. direction was issued on 23.12.1991 to give provisional admission. After admission of the writ petition the same order was continued. Though an application was preferred by the respondents 2 to 4 to have the order vacated on the ground that migration from an unrecognized Medical College to a recognised Medical College was not permissible, the same was dismissed.

Some interesting development took place during this stage. The candidates did not produce the required document. Hence provisional admission was not granted to them by the respondents 2 to 4. That led to the filing of Interlocutory Application No. 2805 of 1992 for further direction. Respondents 2 to 4 also filed an application for direction on 26.3.92 inter alia pointing out that before grant of provisional admission, the writ petitioners were required to submit proof of their having passed 1st year course at Tanzania. In the absence of such proof the admission was impossible. Further in which year of the MBBS course the first respondent was to be admitted, was not free from difficulty. it was averred that even without passing the first year from the university of Dar-es-Salam the claim is made for admission to the second year. This is nothing but fraud the High Court strangely permitted the writ petitioner. Kumari Divya Nelson to withdraw herself from the petition and it directed respondent 1 alone could prosecute his studies. The authorities were directed to grant provisional admission his filing necessary forms and depositing admission fees without insisting on the production of any other certificate or testimonials or syllabus of Dar-es-Salam University.

For non-compliance with this direction a contempt application was taken but by the first respondent. On peril of contempt the Dean (Respondent 4) had not other option but to comply with the order of provisional admission.

Against this order directing provisional admission without insisting on the production of any other documents SLP (C) No. 10498 of 1992 was preferred. Leave was granted on 7.9.92 by this court staying the operation of the order dated 18.5.92 of the High Court. This Court directed that the interim order well subsist

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till the disposal of the writ petition before the High Court and requested the High Court to dispose of the writ petition of the respondent I expeditiously.

By the impugned judgment dated 5th March, 1993 the writ petition was allowed. The resolution dated 20th August, 1991 refusing to accede to the request of the writ petitioner respondent (1) for migration was quashed holding that there was no application of mind by the Council. It is under these circumstances these appeals by special leave to appeal have come to be preferred.

Mr. Harish N. Salve, learned counsel for the appellant would submit the following grounds attacking the impugned judgment:

The High court erred in directing admission to respondent I in recognised medical college in India from an unrecognized college by way of migration/ transfer. WI the more so. when such impermissibility has been recognised by this Court in Medical Council of India, New Delhi v. Rajendra S. Sankpal and Ors. etc. (C. A Nos. 3-4 of 1991 dated 21.10.92) and order dated 6.12.1990 of this Court passed in Medical Council of India v. Ms. Sunita Anant Chavan & Ors. (I.A..Nos. 2-7 in Transfer Petition (Civil) Nos. 230-235 of

1989).

The High Court misread Regulation V. Under that Regulation migration is allowed from a recognised medical college to another recognised college and that too within three months after passing of the first professional examination. In so far as the first respondent has neither undergone study in a medical college recognised by the Council nor has he passed the first professional examination, he could not be admitted to the second year.

The first respondent failed in the subject of Anatomy which is one of the papers taught in the first year at Dar-es-Salam University. Under the Examination Regulation of the said University he was required to sit in the supplementary examination in the failed subject before the beginning of the next academic year. Thus he was required to clear the said paper within six weeks. Should he fail in the supplementary examination he ceases to be a student of the College/University. In so far as the first respondent did not take the supplementary examination he ceased to be a student of Dar-es-Salam University. Therefore, the question of migration could not arise at all.

The first year course of Dar-es-Salam University is not equivalent to the first phase of MBBS Examination in India.

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Equivalence has to be decided by only an expert body, that too, on technical and academic matters. It is not in the domain of assessment or evaluation by the Court. The High Court should not have embarked on the determination of equivalence on the basis of sketchy materials placed before it.

The High Court erred in relying on. *Minakshi Malik, v. University of Delhi*, AIR 1989 SC 1568. There, the candidate was not, in any matter, ineligible while here, the first respondent is ineligible. The High Court erred overlooking that an administrative authority like the appellant is not required to pass reasoned orders. The decree awarded by Dar-es-Salam University is not recognised and is not included under any of the Schedules of the Medical Council of India Act, 1956. Therefore, there was no occasion for the appellant to decide the equivalence. Should the first respondent be anxious he should have placed all the materials.

In opposition to this, learned counsel for the respondents, argues that the Council has taken a self-contradictory stand. In one breath, it will contend that there are no materials to decide the equivalence and in the other breath it would say it is not equivalence.

Under these circumstances, in view of the cryptic order passed, the High Court itself decided finding that the Council had not applied its mind. The High Court was satisfied on the basis of documents there is equivalence. The High Court is well entitled to do so. More so, having regard to the ruling of *Minakshi Malik's* case (supra) Equity also must weigh in favour of the first respondent. In any event, the first respondent had passed his pre-Medical test successfully in the year 1991. He also belongs to scheduled tribe. Therefore, on the basis of these two documents his candidature could be considered for admission to first year MBBS Course for the ensuing academic year of 1993-94 as otherwise, the career of a young man would be completely ruined.

The factual position with regard to study of the first respondent in Dar-es-Salam University requires to be carefully analysed. The claim of the first respondent is that he has passed G.C.E. 'O' level as well as 'A' level

examinations from the University of London conducted by the Education Council of the Government at Dar-es-Salam in Tanzania. He claims to have obtained credits in 'A' level in the following three subjects

- (i) Biology,
- (ii) Physics; and

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- (iii) Chemistry

In 'O' level he claim.,; to have obtained credits in the following six subjects

- (i) Biology,
- (ii) Chemistry,
- (iii) English Language,
- (iv) English Literature,
- (v) Mathematics; and
- (vi) Physics

On this basis, he claims admission to any Medical College in India as these are considered to be equivalent qualifying examinations and prerequisite for admission to any Medical College. It is claimed on behalf first respondent at Rani Durgawati University of Jabalpur has given an equivalence certificate. That is extracted below

"With reference to your above cited letter, it is to inform you that students have passed in five subjects at least at the G.C.E. (Ordinary Level) and two subjects at the (Advanced Level) from University of London, are treated as having successfully completed the 12 year Pre-University/Higher Secondary in India.

Hence, if your son Shri Silas Supragya Nelson has passed above examination then he may appear in Pre Medical test examination as desired by you."

According to first respondent, he was admitted in Muhmbili Medical College in the Faculty of Medicine which is affiliated to the University of Dar-es-Salam in the year 1989 and has completed one year at the same College and University. In the First year he had studied subjects in Anatomy, Physiology Biochemistry, Preventive and Social Medicine which includes Behavioural Science and Biostatistics, Medical. Psychology and Development Studies & Medical Surgery whereas at Rani Durgawati University, the subjects taught in the first year are Anatomy, Physiology, and Biochemistry. Thus the courses followed at Dar-es-Salam University are much wider. It was further claimed that his course in the said Medical College is equivalent to first year course of MBBS Degree awarded by Rani Durgawati University, Jabalpur and, therefore, he possesses the eligibility criteria for admission to the MBBS Degree Course at Jabalpur.

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On the said basis migration is sought. Dar-es-Salam University is not recognised by the Medical Council of India. Therefore, front all unrecognised institution admission is sought to a recognised institution.

With the object of maintaining and regulating, standards of medical education in the country, the Parliament enacted "the Indian Medical Council Act, 1956". Under Section 6 of the Act. the Medical Council of India has been incorporated, which is a body corporate having a perpetual succession and a common seal Section 12 of the Act makes provisions for recognition of medical qualifications granted by medical institutions in countries with which there is a scheme of reciprocity. Under this section, the schedules are given providing list of recognised medical institutions

& qualifications. The first schedule gives list of recognised medical qualifications granted by universities/medical institutions in India; whereas schedule second gives the list of recognised medical qualifications granted by medical institutions outside India. University of Dar-es-Salam & its medical institution is not included in the second schedule and therefore the qualifications imparted by that institution are not recognised. That apart, section 14 of the Act makes provisions for recognition of medical qualifications (granted by countries in which there is not scheme of reciprocity. The Central Government has not considered Dar-es-Salam University for such recognition.

It was in this context the following order came to be passed by the appellant

"The Director,
Medical Education,
Madhya Pradesh,
Bhopal

Subject:- Migration of Silas Nelson and Divya Nelson from Dar-es-Salam Medical College, Tanzania to Medical Collage, Jabalpur.

Sir,

With reference to your letter No. 6151/DME/IV dated 12.5.1990 I am to state that the matter regarding, Migration of Silas Nelson and Divya Nelson from Dar-es-Salam Medical College, Tanzania to Medical College, Jabalpur was duly placed before the Executive Committee of this Council at its meeting held on 20th August, 1991 for consideration.

The Committee decided as under:

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The Executive Committee considered the matter with regard to the migration of the above candidates on individual merit to Medical College Jabalpur under Clause V(e) of the migration rules and did not allow these migration since the grounds are not sufficient for migration and the facts stated in the individual cases are not very relevant for grant of permission for migration. For considering any such cause of migration, it is important to consider the cause of study the student has already undergone vis-a-vis the course being taught in the Medical Colleges in which the migration is sought. Further it is observed that the candidates seeking their migration have also brought no records to show the course of study being conducted at their medical college for making comparison with the study being conducted in Medical College, Jabalpur. Hence the applications for migration of the above candidates are rejected.

Your faithfully,
(Mrs. M. Sachdeva)
Off. Secretary."

Concerning migration the rule also is to the effect that the same can be allowed by the University concerned within three months after the passing of the first professional examination.

Then, the question of equivalence arises. The equivalence came to be decided in the following manner:

"Reference-Letter dated 28.12.1991 of Dy. Registrar (General) R.D. University, Jabalpur.

Regarding letter of ku.Divya Nelson and 2/ Silas Nelson to the University.

I have gone through prospectus of University of Dar-es-Salam (1990-90)

For M.D. degree which is equivalent to M.B.B.S. of Universities abroad (as per letter No. H/Q/G.N/17862 dated 2nd May, 1990 of Director of Training and Occupational

Health Service, attached in the file).

For examination at the end of first year in Dar-es-Salam University the subjects are:--

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Anatomy/Histology	-	
Behavioural Sciences		Only one
Biochemistry	-	Year study.
Physiology		
Development studies		

Where in Indian Universities the First MBBS Course which is of 18 months the subjects examined are (As premedical Council of India)

Anatomy		
Physiology	-	one and half,
Biochemistry	-	Year study

As the detailed syllabus of the 5 subjects taught in one year at Dar-es-Salam University is not given in the Prospectus, it is difficult to know whether the course is equal as only three subjects are taught in Indian University for one and half years indicating that these subjects are taught in more detail here in our University. However, in general the subjects taught there in first year included Anatomy, Physiology and Biochemistry (along with other two subjects) which are also the subjects of first M.B.B.S. (one and half years course) here also. For mote clarification, the Medical Council of India may be consulted because they are the main authority in India in this respect. Dean, Faculty of Medicine of our University was also consulted in this matter/

sd/-

Protessor & Head. Dept. of Biochemistry
Medical College & Chairman Board of Studies
for Anatomy, Physiology & Biochemistry.

This may be put up before the standing for confirmation."

We cannot understand when this was the position with reference to equivalence how the High Court had donned the role of an expert body and would say as follows

"The petitioner has filed documents showing that Dr. R.K. Gupta, Reader in Pharmacology of the Medical College, Jabalpur was sent on deputation for teaching in the medical college affiliated to Dar-es-Salam University. The petitioner, by filing the documents, wants to show that persons having requisite qualifications for teaching in the Medical College, Jabalpur were posted or appointed at the medical college affiliated to Dar-es-Salam University. The documents filed by the petitioner show that the subjects taught in the first year M.B.B.S. at Muhibili Medical

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College, Dar-es-Salam University and the subjects taught at the Medical College, Jabalpur are the same. to us the material consideration is the qualifications necessary for admission to the first year M.B.B.S. course. The documents on record show that the educational qualifications for admission to the Medical College, Jabalpur and the Muhibili Medical College of Dar-es-Salam University are the same and there is equivalence of courses. As there is equivalence of courses required for admission to the first year M.B.B.S. courses in Muhibili Medical College and the

Medical College, Jabalpur, the petitioner is entitled to be transferred to the first year M.B.B.S. course of the Medical College, Jabalpur and should be permitted to appear in the examination conducted by the Rani Durgawati University, Jabalpur."

This is totally unwarranted because the High Court does not have the necessary expertise in this regard. As to the equivalence we have already extracted the opinion of the Chairman of Board of Studies for Anatomy, Physiology and Biochemistry. From the above extract it is clearly seen that the Council is the main authority in this respect. Then again, the High Court had gone wrong in concluding that the individual cases are relevant for the grant of permission for migration. In our considered view, as rightly concluded by the Council, what is material is the course of study which a student has undergone vis-a-vis the courses being taught in the Medical College in which the migration is sought. What the Council was endeavouring to point out was the materials placed before it by the present first respondent were not sufficient to decide the equivalence. The criticism of the Council, by the High Court, is also not warranted. First of all, no certificate was produced by the first respondent that he had completed the first year course in Dar-es-Salam. Unless and until that is done the question of admission to the second year MBBS could not arise. The first respondent had not appeared in the supplementary examination. If that is so, according to the Regulations of Dar-es-Salam University, he is deemed to have discontinued from that Course. In such a case the question of giving admission to Medical College at Jabalpur could never arise. Therefore, looked at from any point of view, the Medical Council of India which is the authority to decide the equivalence, has come to the correct conclusion, in that, there cannot be a migration from unrecognised institution to a recognised Medical College. The judgment of the High Court is wholly unsupportable.

Once we have arrived at this conclusion the question arises whether the case of the first respondent could be considered for the academic year 1993-94 based on his performance in the pre-Medical test for the year 1991. The statement of

800 marks obtained in pre-Medical Test, 1991 is as under:

"Subjects	Max. Marks	Marks Obtained
Physics	300	127
Chemistry	300	220
Botany	300	160
Zoology	300	214
English	300	217
	1200	721"

He also claims that he belongs to Scheduled Tribe. We do not have material to show as to whether he was granted admission to any Medical College on the basis of his performance in the pre-Medical test for the year 1991. However, in the petition for special leave to appeal the appellant has made the following averments

"In the said Counter-affidavit, on oath the respondent no.1 deliberately, knowingly and

willfully made a false statement that he had never appeared in the Pre-Medical Test held in the year 1991 and failed. It was further stated that in fact it was his younger brother Sushrut who had appeared in the T.M.T

Examination of 1992. The petitioner herein has made an inquiry and has come to know that the respondent no.1 appeared in the Pre-Medical Test, 1991 vide application No. 27811 and was allotted Roll No. 624227 but failed to qualify and complete in the said test.....

Since the writ-petitioner respondent no.1 appeared in the Pre-Medical Test, 1991 vide application no. 27811 and was allotted Roll No. 624227 but failed to qualify and complete, he was not at all eligible for admission to the undergraduate medical course in India."

If this be the correct position, he would not be entitled to be considered for admission for the academic year 1993-94 on the basis of his performance in the Pre-Medical test held in the year 1991. It is for the concerned authority to verify the factual situation and decide the matter.

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We make it clear that if his case has already been considered for admission on the basis of performance in the Pre-Medical test 1991 and rejected there is no need to consider his case once again for the year 1993-94. Otherwise, it may be considered on the basis of performance in the pre-Medical test for the year 1991 as against the quota intended for Scheduled Tribe, if his status as belonging to Scheduled Tribe is established provided there is no legal impediment in doing so.

Subject to the above directions, civil appeals will stand allowed. However, there shall be no order as to costs.

I.A. No. 1 of 1993 in SLP (C) 6161 of 1993 is also allowed.

U.P. Appeal allowed.

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