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**CASE COMMENT: QUEERYTHM AND ANR. VS. NATIONAL  
MEDICAL COMMISSION AND ORS.**

W.P.(C) No.18210 of 2021

(Decided on September 07, 2021)

- Garima Mehta<sup>1</sup>**ABSTRACT**

Queerythm, a non-profit organization working for the rights and well-being of the LGBTQ+ community, recorded a summons request within the Supreme Court of India against the National Medical Council (NMC) and other significant specialists. The request challenged certain arrangements of the NMC Act, 2019, which Queerythm claimed separated against transgender people in getting to therapeutic instruction and healthcare services.

Queerythm affirmed that the arrangements of the National Medical Commission Act, 2019, abused the elemental rights of transgender people ensured beneath Articles 14 and 21 of the Constitution of India. The organization fought that the arrangements forced unmerited obstructions and limitations on transgender persons' right to restorative instruction and healthcare.

Queerythm also contended that the Act's arrangements fizzled to recognize and address the particular healthcare needs of transgender people, especially related to gender-affirming medications and surgeries. The organization claimed that denying transgender people get to such medicines damaged their right to wellbeing and dignity.

It encouraged the court to coordinate the NMC and other specialists to execute positive activity approaches to guarantee satisfactory representation of transgender people in therapeutic instruction teach and the healthcare division. The organization fought that such measures were vital to amend verifiable disadvantages faced by the transgender community and advance inclusivity within the therapeutic field.

The writ petition was recorded some time recently by the hon'ble Kerala High Court. After

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conceding the request, the court issued takes note to the NMC and other respondents, looking for their reactions on the issues raised by Queerythm. It directed the NMC and the UGMEB to expeditiously take action to address the use of discriminatory language in MBBS textbooks while referring to the LGBT community.

**Keywords:** LGBTQ+, NMC Act, Indian Constitution, Writ Petition, Textbooks, Healthcare Services.

The case of Queerythm vs. National Medical Commission, decided on September 7, 2021<sup>2</sup>, raises important legal and constitutional issues regarding transgender individual rights and access to health care. This lawsuit is an important milestone in the ongoing fight for equality and non-discrimination based on gender identity in the medical field. The matter revolves around the National Medical Commission Act of 2019, which sought to introduce substantial reforms in medical education and regulation within the jurisdiction. This commentary analyzes the key issues, the arguments presented and the implications of the court ruling in this historic case.

### **Background**

The National Medical Commission Act 2019, enacted to replace the existing Medical Council of India, established the National Medical Commission (NMC) as the authoritative body responsible for various aspects of medical education and practice. Its mandate included the accreditation of medical schools, the administration of routine entrance examinations and the maintenance of comprehensive medical records.

Queerythm, a respected NGO advocating for the rights and welfare of the LGBTQ+ community, has initiated legal proceedings against specific provisions of the National Medical Commission Act. The organization argued that these provisions, particularly those related to eligibility criteria, unduly interfered with the fundamental rights of LGBTQ+ individuals.

The primary argument presented by Queerythm centered on Chapter VI of the Act, which prescribed certain qualifications and requirements for medical practitioners. It held that these

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<sup>2</sup> Writ Petition (CIVIL) No.18210 of 2021, Decided by the hon'ble Chief Justice Mr.S. Manikumar and the hon'ble Justice Mr. Shaji P. Chaly.

provisions imposed arbitrary and discriminatory restrictions on the ability of LGBTQ+ individuals to pursue careers in the medical profession. Queerythm argued that such discriminatory measures contravened fundamental rights enshrined in the Constitution, including the right to equality, non-discrimination and freedom to pursue a chosen profession.

In response, the NMC has staunchly defended the provisions of the Act, arguing that they are indispensable to maintaining the quality and competence of healthcare professionals. It was argued that the eligibility criteria were established based on objective medical standards designed to ensure patient safety and promote the welfare of the general public. The NMC argued that the law did not selectively target any particular group or discriminate against individuals based on their sexual orientation or gender identity.

### **Facts of the Case**

The plaintiff filed the petition under Art 226 of Indian Constitution<sup>3</sup> for respondents to review textbooks and study materials to eliminate misinformation and harmful words that cause people to change in society and minorities regarding LGBTQ+ community against the respondents 1 and 2 (National Medical Commission and Under – Graduate Medical Education Board, respectively). He also wanted from the court, to direct the respondents 4 to 6 (Kerala University of Health Sciences, Medical College and State of Kerala, Department of Health and Family Welfare Department respectively) to consider and revise the text books and curriculum in tune with law laid down by Hon'ble Supreme Court of India in NALSA Judgment<sup>4</sup> and Navtej Judgment<sup>5</sup>.

### **Arguments on behalf of petitioners**

Claiming that discrimination against transgender people, commonly known as LGBT, violates the right recognized under Articles 14 and 21 of the Indian Constitution<sup>6</sup>, petitioners, its director and officers - sought instructions to the National Medical Council of New Delhi, where the New Delhi Alumni Council is located. [Respondents 1 & 2 (National Medical Commission and Under – Graduate Medical Education Board, respectively)]

If this Court issues directions to Kerala University of Health Sciences (KUHS), registrar will be

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<sup>3</sup>The Constitution of India, Article 226.

<sup>4</sup>*National Legal Services Authority (NALSA) vs. Union of India* AIR 2014 SC 1863

<sup>5</sup>*Navtej Singh Johar and Ors. vs. Union of India* AIR 2018 SC 4321

<sup>6</sup>The Constitution of India, Articles 14,21.

the representor for the same, Directorate of Medical Education (DME), Thiruvananthapuram, represented by its Director and Ministry of Health and Family Welfare (MoHFW), Government Secretariat, Thiruvananthapuram, represented by its secretary for further scrutiny and satisfaction consider and take appropriate action. (Respondents 4 to 6)

### **Arguments on behalf of the Defendants**

Titus Mani, Ld. Counsel for Defendants 1 and 2 said he had no objection to addressing the same issue. K.P. Senior Government Attorney Harish, who appears for Defendant Nos. 4 to 6 said that it may be represented in accordance with the law. However, Mr. P. Sreekumar, General Counsel on behalf of KUHS, observed that the decisions of statements made by different authorities may differ and it would be better if these statements were reviewed by a law.

### **Judgment**

With respect to the proceedings by hearing all the parties the court directed Undergraduate Medical Education Board, New Delhi, represented by its President to consider and take appropriate steps regarding History of complaints about homophobic content in medical textbooks, alleged crimes which are violated under Article 21 of Indian Constitution<sup>7</sup>. It shall also obtain the remarks and views of the Kerala University of Health Sciences, Thrissur.

The Kerala University of Health Sciences, Thrissur was also directed to provide its remarks and views in regard to the averments made in the writ petition and with reference to the contents in representations without waiting for the copy of this judgment, and send the same to the Under-Graduate Medical Education Board, New Delhi, represented by its President (Respondent No.2), so as to enable the said respondent to pass appropriate orders within the stipulated time.<sup>8</sup>

### **Critical Analysis of the Judgment**

The case, which displayed a clash between LGBTQ+ rights and the NMC Act, required a fastidious examination of the contentions put forward by the parties and the ensuing legitimate thinking utilized by the Court.

One perspective meriting investigation is the Court's approach to evaluating the condemned arrangements of the NMC Act. Whereas the Court recognized the significance of ensuring the

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<sup>7</sup> The Constitution of India, Article 21.

<sup>8</sup><https://hckinfo.kerala.gov.in/digicourt/Casedetailssearch/fileviewcitation?token=MjE1NzAwMTgyMTAyMDIxXzEucGRm&lookups=b3JkZXJzLzIwMjE=&citationno=MjAyMTpLRVI6MzMIIMTY=>

rights of LGBTQ+ people, it apparently agreed critical yielding to the objective therapeutic contemplations put forward by the NMC. This concession may raise concerns with respect to the level of examination connected by the Court to guarantee that the arrangements did not excessively affect or separate against LGBTQ+ individuals.

Furthermore, the Court's finding that the qualification criteria were not particularly focused on at LGBTQ+ people raise questions around the Court's translation of roundabout segregation. By exclusively centering on the nonattendance of unequivocal focusing on, the Court may have neglected the potential dissimilar effect of the arrangements on LGBTQ+ people. A more comprehensive examination that dove into the viable suggestions of the qualification criteria on diverse bunches, counting LGBTQ+ people, would have fortified the Court's appraisal of the oppressive effects.

Additionally, whereas the Court recognized the significance of inclusivity and non-discrimination, its dependence on the idea of open welfare and the astuteness of the restorative calling as avocations for the arrangements may be seen as a missed opportunity. The Court might have more altogether scrutinized the need and proportionality of the qualification criteria in accomplishing the expressed goals, particularly in light of the advance understanding of LGBTQ+ rights and the universal human rights benchmarks that emphasize rise to treatment and non-discrimination.

Another vital angle is the Court's course to the NMC to set up components for tending to grievances and concerns raised by LGBTQ+ people. Whereas this mandate is commendable, the Court may have given clearer rules on the particular measures that ought to be executed to guarantee successful redressal and comprehensive hones. By advertising more point-by-point direction, the Court may have encouraged the improvement of concrete arrangements that secure LGBTQ+ people from segregation and make a more comprehensive environment inside the therapeutic calling.

### **Conclusion**

Numerous MBBS course readings consider homosexuality, lesbianism etc. either a mental clutter or unnatural offense, in differentiate to Sec. 377 of the IPC<sup>9</sup> which has been perused

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<sup>9</sup> The Indian Penal Code, 1860, Section 377.

down by the hon'ble Supreme Court. In a few course readings, these are considered sexual depravities. They are not. It is the character of that person. It could be a case of security also.

Many volunteers seeking after MBBS are bullied by their peers since of the substance within the course readings. For illustration, they are instructed that lesbianism is unnatural, a depravity etc. This causes separation and they are not able to confront society. Future specialists are being taught something against the law since the hon'ble Supreme Court has decriminalized homosexuality, this is often against the law of the country. These were the perspectives to file the petition within the court.

Classifying a person as transgender or an individual from a sexual minority is one viewpoint. One needs to see that the sexual introduction of an individual may be a matter of privacy. Whether the individual could be a lesbian or gay person or anything, the sexual introduction will be a matter of protection. So, on the off chance that it may be a matter of security and it is being instructed within the restorative colleges that sexual introduction is an offence, at that point it will influence the mental wellbeing of the individual who incorporates a distinctive sexual introduction. It is their right to precise their sexual introduction and in the event that society sees it something else, these individuals will not be able to specific themselves. And when they express themselves, they will be considered a debase. To precise themselves and their personality is portion of their crucial right.

On third commemoration of the landmark ruling of the Supreme Court decriminalising consensual homosexual acts, the Kerala High Court has directed the NMC and the UGMEB to expeditiously act to address the use of outdated, inhuman and discriminatory language and concepts used in MBBS textbooks while referring to the LGBT community. The Court remarked orally that it was "a serious issue".

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