

(1996) 09 KAR CK 0056
In the Karnataka High Court
Case No : WP. 22316/96

A Citizen of India

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 20-09-1996

Acts Referred:

Indian Medical Council Act, 1956 — Section 10 A, 10 B, 10 C
Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 — Section 4 (1) (b)

Citation : (1996) ILR (Kar) 3136 : (1996) 7 KarLJ 426

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : Ashok Harnahally, Amicus Curiae, for the Appellant; S. Vijay Shankar, General with A.V. Srinivasa Reddy, Additional G.A. for R-1, Shailendra Kumar, Sr. CGSC for R-2 and Ors. Advs., for the Respondent

Judgement

G.C. Bharuka, J.—The National Law School of India University, Bangalore, in its publication "March of the Law, 1994", while reviewing legal developments in India in the field of Education Law, has noticed that "1992-93 will go down in the history of constitutional litigation on education. The debate that started with Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, , on the issue of policy on education, specially relating to professional education, dictates several dimensions and reached Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , via Miss. Mohini Jain Vs. State of Karnataka and others, . The Parliament also took immediate notice of the said developments and appropriately responded by enacting Indian Medical Council (Amendment) Act, 1993 and the Dentist (Amendment) Act, 1993. But all in vain. The mischief sought to be remedied could still found their ways to survive with higher vigour openly declaring "we are unconquerable. We survive with ten heads like Ravana." The enquiries conducted in these proceedings, the documents produced by the Central Government, the Medical Council of India and the Dental Council of India conclusively proves that the Managements of the Medical and Dental Colleges in

the State, with the support, active or tacit, of the State Government and the University Authorities have conveniently flouted the Judicial and Parliamentary mandates by admitting students far in excess of their legally permissible overall in take as also the prescribed management quota. Shockingly, it has not only been so done at the cost of the statutorily defined minimum standards of Medical and Dental Education, rather it has also subjected the students so admitted to their utter dismay exposing their careers to peril particularly keeping in view the mandatory provisions contained in Section 10B of the above Acts. It may be noticed here that if the admission of any student is found to be hit by the said provisions, the medical or dental qualifications acquired by them may remain wholly futile and fruitless having no practical utility thus resulting in complete waste of time, energy and money spent in pursuing the said professional courses.

BACKGROUND SETTINGS

2. This participatory judicial proceeding in the nature of a public interest litigation was registered on the basis of a public complaint received through post inter-alia alleging there-in that the Medical Colleges in the State of Karnataka have been permitted by the State Government to admit students far in excess of the admission capacities fixed by the Medical Council of India (in short, "Council") despite the direction and request of the latter under its letter dated 21.11.1994 addressed to the State Government through its Secretary, Health and Family Welfare, with copies to the Director of Medical Education and to the Principals and Deans of the said medical colleges inviting their pointed attention to the provisions of Section 10A, 10B & 10C of the Indian Medical Council Act, 1956 (in short, the "Central Act") as inserted by the 1993 Amendment with effect from 27.8.1992. It is also alleged that the managements of the colleges have regularly indulged in admitting students even in excess of the in takes fixed by the State Government under the guise of "backlog vacancies" a concept unsupportable with reference to any statutory provision and far in excess of 15% management quota fixed by the Supreme Court. The reason implicitly suggested for commission of these illegalities cannot be outrightly rejected as frivolous or mala fide, since of late it has surfaced as a reality in various spheres. The complainant says "Sir, you may know the fee for each seat is 75,000 US dollars." Even the Supreme Court has taken judicial notice of this fact in its order dated 10.5.1995 in the case of T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, , by observing "It is common knowledge that each seat under this quota is sold for huge sums not all accounted for and not all in Indian currency".

3. It has also been brought on record a publication made by the CET Cell of the Karnataka Government titled "College Information Directory - CET - 1996" which has been published for information of the candidates who are inspiring to take admission in the medical, dental and engineering colleges situated in this State during the academic year 1996-97 representing the admission capacity of the colleges as fixed by the State Government which is far in excess of what has been fixed by Council. Request has been made to look into the matter and take

necessary action.

4. For the present, I am concerning myself only with the issue of determination of the legally permissible admission capacities of the medical colleges of the State which can form the measure for giving admissions to the candidates through the CET Cell against free and payment seats and by the managements against NRI quota to be fixed in accordance with the directions of the Supreme Court in the cases of Unnikrishnan, T.M.A. Pai Foundation and the "Karnataka Selection of Candidates for Admission to Engineering, Medical, and Dental Courses Rules, 1993" (in short, the "Admission Rules") framed under the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (in short, the "Capitation fee Act") consequent to the said directions of the Supreme Court.

5. Initiation of the present proceeding became imperative for the reason that if the things were to be left at the stage these were and if ultimately on a proper construction of the respective statutory provisions it was to be declared that quite a good number of students admitted to these courses have fallen prey to the misrepresentations made by the State Government or the Managements of the Institutions, it might have been too late to remedy the havoc which would have fallen on thorn because of stringent provisions contained in Section 10B of the Indian Medical Council Act and the Dentist Act.

6. Keeping in view the aforesaid avowed objects, since the determination of the issues involved, required collection of enormous data and information regarding the establishment and fixation of admission capacities in takes of all the medical colleges by the Council, State Government, Universities and as to whether any scheme had been filed in this regard before the Central Government interims of Section 10A/10C of the Central Act and the respective orders passed by the said authorities and the inconsistencies appearing in such fixations, under the order dated 26.8.96. I appointed Sri S.K. Venkata Reddy, Registrar(Vigilance) of this Court as the Inquiry Officer to collect the informations from all concerned and file College-wise reports in a given format. The Writ Appeal No. 7913/96(disposed of on 28.8.96) taken by the State Government against the said order before the Division Bench materially failed subject to certain observations. The learned Inquiry Officer, on the basis of the materials placed before him, submitted his First Report pertaining to 17 medical colleges, the admissions wherein are governed by the provisions of the "Admission Rules" on 4.9.96. Copies thereof were immediately made available to the Learned Counsel appearing for all the respondents. I place on record my appreciation for Sri S.K. Venkata Reddy (Registrar Vigilance) of this Court, who has very efficiently and effectively conducted the required inquiry in the present proceedings and submitted the report within the fixed time frame despite various constraints. Subsequently, affidavits stating some additional facts with certain orders passed by various authorities like the State Government, respective Universities and Council were filed on behalf of some of the Medical Colleges which were taken on record.

Objections/Affidavits have been filed on behalf of the Central and State Governments, Council, D.C.I. The correctness of the basic data contained in the Inquiry Report has not been challenged. But the objection taken was that the Inquiry Officer should not have recorded any finding or conclusion in respect of permissible admission capacities of the colleges which was beyond the scope of enquiry entrusted to him. The objection taken of the said score is valid. The inferential opinion of the Inquiry Officer will carry no bearing on the findings to be recorded by me.

GROUND REALITIES

7. Admittedly, there are 19 medical colleges in the State. Out of which two fall under the deemed University viz., Manipal Academy of Higher Education, the admissions wherein is presently not regulated through CET conducted under the "Admission Rules" because of the Division Bench Judgment of this Court in the case of Manipal Academy of Higher Education (A Deemed to be University), Municipal Vs. State of Karnataka and others etc., and the matter is presently pending before the Supreme Court in appeal. All the remaining 17 Medical Colleges, out of which 4 are Governmental, had been established prior to 1.6.1992.

8. It is now a matter of record that the Government of Karnataka had been increasing the intake of the Medical Colleges in question from time to time in excess of what had been fixed by the Council, in as much as, whereas the Council, keeping in view the minimum standard of Medical Education laid down in the statutory regulations had fixed the total admission capacities of the said 17 medical colleges for admission to the first Year MBBS course at 2005 (two thousand five) for the academic year 1993-94 and 1994-95, the same was increased by the State Government to 2814 and 2945 respectively purporting to exercise its statutory powers in the said regard under the provisions of Section 53(10) of the State Universities Act, 1976 read with Section 4(1)(b) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (in short the "Capitation Fee Act"). When the said facts came to the notice of the Council, it took strong exception to the same in its letter dated 21.11.1994 referred to above which was addressed to all concerned including the State Government. The contents of the said letter are very material and are therefore quoted in extenso. The relevant extract reads as under:-

"It has been brought to the notice of the Council that following medical colleges in Karnataka are admitting students in excess of the admissions fixed by the Council because of a G.O. of Karnataka Government.

The details as available in this office of the sanctioned strength fixed by the Council, State Government and the admissions being made by the colleges are as follows:-

Sl.No.

Name of the college

Sanctioned strength by the Council Sanctioned strength by the State

Information sent readmission made by the authorities of the college for the year
1993-94

1.

JJM Medical College Davangere

245

328

250

2.

JN. Medical College Belgaum

130

195

205

3.

M.R. Medical College Gulbarga

100

185

207

4.

JSS. Medical College

100

200

100

5.

Adichunchanagiri Institute of Medical Sciences, Bellur

100

195

195

6.

Sri Devaraj Urs Medical College, Kolar

100

150

150

7.

Sri Siddartha Medical College

130

195

130

8.

Kempegowda Institute of Medical Sciences, Bangalore

50

120

125

9.

M.S. Ramaiah Medical College, Bangalore

130

118

100+50 (Malaysian)

10.

BLDE Medical College Bijapur

150

180

204

11.

Dr. B.R. Ambedkar Medical College, Bangalore

100

120

120

12.

St. John's Medical College, Bangalore

60

60

60

13.

Kasturba Medical College Bangalore

250

300

300

14.

Kasturba Medical College

250

250

250

The above matter was placed before the Executive committee of this Council at its meeting held on 24.8.94. The Executive Committee decided to request the State Government to reduce the excess number of admissions being in the State Medical Colleges (Government / Pvt.) to the number as approved by the Medical Council of India.

In this regard, I am to draw your kind attention to the following relevant portion of the Indian Medical Council (Amendment) Act, 1993.

(Sections 10A, 10B and 10C quoted)

I am, therefore, directed to request you to please take corrective steps and reduce the excess number of admissions being made in the State Medical Colleges (Government Pvt.) to the number as approved by the Council."

9. The State Government in its first affidavit filed in the present proceedings on 19.8.96 through Sri R.N. Shastry, Secretary, Health and Family Department acknowledged the receipt of the said letter and has brought on record its response to the said letter. It has been stated that on the receipt of the said letter of the Council, the then Chief Minister of Karnataka had a meeting with the President of the Council, and thereafter addressed a letter to the Union Health Minister on 25.4.1995 (Annexure 1), the contents whereof being material for more than one reason are being extracted hereunder in verbatim:-

Dear Dr. Silvaraj,

You are no doubt aware that Karnataka has a large number of medical colleges, all of which have secured recognition from the Medical Council of India. We have however been experiencing a major problem ever since the MCI (Amendment) Act, came into effect during the latter part of 1992. Earlier, when the State Government had the authority to fix the in take in Medical Colleges, there used to be some difference between the State Government approved in take and that by the Council and the former, usually, was higher. In respect of most of the colleges, the State Government has not increased the in take ever since the new Ordinance came into effect.

I enclose a statement indicating the in take levels of all the private medical colleges in our State. It may be appreciated that if we suddenly reduce the in take/level of each college to that prescribed by the Council, the consequence will be a drastic fall in the number of medical seats available in the State. This would cause a great deal of resentment, not only among the Managements running these colleges, but also the student community at large.

Recently, I have had an occasion to discuss this matter with the President, Medical Council of India at Bangalore. I am sure the Council will now be in a better position to appreciate the State Government's predicament. While we shall certainly ensure that henceforth no further increase in in take takes place in any private medical college in the State without Central Government's prior approval, it is imperative that the present level of in take is allowed to continue in these colleges. We shall, in the meanwhile, ask each of these institutions to attain, within a fixed time frame, the appropriate level of facilities in accordance with the Council norms. With regards.

Yours Sincerely, Dr. C. Silvera sd/H.D.Devegowda Hon"ble Union Minister for Health Government of India, Nirman Bhavan New Delhi-110 001."

10. As stated in the statement of objections filed on behalf of the Union of India, the said letter was forwarded by the Central Government to the Council on 18.5.1995 for its comments. It has been further stated that the Government of Karnataka was simultaneously requested to send a copy of the statement of private medical colleges which was not received earlier though mentioned in the letter. But the same has not been received so far. Further, as stated, on 22.6.1995, the Medical Council of India wrote to the Secretary, Ministry of Health, Government of India that the Government of Karnataka may be advised to apply to the Council which after inspection will examine the matter. In the meantime, the Government of Karnataka wrote a letter dated 5.6.1995 requesting for ratification of excess admissions made in the Medical Colleges of the State during 1993-94 due to Court Orders. It has further been stated that under its letter dated 24.8.1995 the Central Government also requested the State Government for submission of statutory schemes in the prescribed form as required under the Amendment Act of 1993 for increase in the admission capacities college-wise. The contents of the letter are to the following effect:-

New Delhi August 24th 1995

"To

The Secretary, Government of Karnataka, Health and Family Welfare Department
M.S. Building, Secretariat Bangalore.

Sub : Ratification of excess admission in the medical colleges of the State of Karnataka.

Sir,

I am directed to refer to your letter No. HFW.15 MSF-95 dated 5th June 1995 and in continuation of this Ministry's endorsement of even number dated the 18th May, 1995 on the subject mentioned above and to say that in accordance with the Indian Medical Council (Amendment) Act, 1993 and the Scheme notified by the Medical Council of India Act, 1993 and the scheme notified by the Medical Council of India vide their notification No. MCI 34(41)/93Med(N) dt. 20.9.93, a proposal to increase the admission capacity in medical colleges, is required to be submitted to the Central Government in the prescribed format. You are, therefore, requested to kindly submit the proposal to increase the admission capacity college-wise to the Central Government, complete in all respects.

Yours faithfully,

(H.N. Yadav) Under Secretary to the Government of India "Copy to the Secretary, Medical Council of India, Kotla Road, New Delhi."

11. The Secretary of the State Government in the above referred affidavit has stated that the above quoted letter dated 24.8.95 of the Central Government does not appear to have been received in the Health Department since it is not available in the connected records. Any how, it is further stated that the Director of Medical Education, Government of Karnataka was asked to issue suitable instructions to all Medical Colleges to come up with appropriate proposals for increasing the admission capacities in the manner required by the Central Government.

12. From the facts noticed above, few material aspects appear to be glaringly clear viz..

I) The State Government was fully aware of the statutory requirements as envisaged under the Central Amendment Act of 1993 which had come into force with effect from 27.8.1992.

II) The State Government had fixed the admission capacities/in take of the Medical Colleges much in excess of the one fixed by the Council pursuant to the inspections conducted under its directions.

III) The infrastructures available in the Medical Colleges were not befitting the admission capacities fixed by the State Government and the same was assured to be attained within a fixed time frame.

13. From the records produced by the Council relating to each medical college of the State, it transpires that almost every year, apart from making requests to the State Government and the affiliating Universities, It had been requesting the respective colleges individually to abide by the minimum standard of medical education requirements. But when it found that the said requests were not being responded to in its proper perspective, the Council was left with no option but to request the Central Government for taking penal actions u/s 19 of the Central Act thereby derecognising the medical qualifications granted by the Universities in the State to the extent covered by those provisions. The said letter dated 20.8.1992 speaks for itself the helplessness of the Council, the expert statutory body constituted for enforcing the requirements of maintenance of minimum standard of medical education in maintaining the same in this State. The letter reads thus:-

"-34(1)/96-Med.11631 20.8.96 The Secretary, Ministry of Health & F.W. Dept. of Health, Nirman Bhavan, New Delhi.

Sub : Excess number of admissions being made, in the medical colleges in Karnataka.

Sir,

The Medical Council has noted that the Government of Karnataka has increased the seats in all the Medical Colleges in Karnataka over and above the sanctioned number of seats by the Council, (copy of G.O. of Karnataka enclosed).

In this regard, Medical Council of India vide its letter dt. 21.11.94 had written a letter to the Secretary to Government of Karnataka, Health & F.W. Department Bangalore copy of which was marked to the Central Government and a reminder dated 25.4.1995 (copy of the letter and the reminder enclosed)

This increase is still persisting inspite of the above letter. The matter was considered by the Executive Committee of this Council at its meeting held on 8.1.1996 which decided that a legal opinion be obtained. The Executive Committee at its meeting held on 10th May 1996 decided that action be initiated as per legal advice. This decision has been later ratified by the General Body of the Council (copies of Executive Committee decisions and legal advice enclosed herewith).

I am directed to request you to initiate action as per the legal advice u/s 19 of the Indian Medical Council Act in the matter, at the earliest (list enclosed).

This may be treated as most urgent.

Yours faithfully Dr. M. Sachdeva, Secretary."

14. Despite the aforesaid requests and directions issued by the Central Government and the Council, as Statutory Authorities under the Central Act and the assurances given by the State Government, the Management of the Medical Colleges in the State being fully protected and supported by the State

Government, remained oblivious to the statutory requirements including that of improving of their infrastructures required for the maintenance of minimum standard of medical education and that of filing the statutory schemes for approval of the Central Government required for increasing the admission capacities as envisaged u/s 10A/ 10C of the MCI Amendment Act, 1993. In the present proceedings as well, except in the case of one or two colleges, no effort has been made to controvert the said material aspects. None-the-less, the insistence and stand both on behalf of the State Government and the respective colleges is that in law, irrespective of the fact whether the colleges have sufficient infrastructure or not, the in takes/ admission capacities as fixed by the State Government prior to 1.6.1992 cannot be disturbed to their disadvantage.

15. In order to repudiate the stand taken by the Council in its letter dated 21.11.1994, directing the State Government to take corrective steps to reduce the admission capacities of the Medical Colleges, so as to bring it in inconformity with the admission capacities determined by the Council, the Learned Advocate General has raised the following propositions:-

(i) MCI has no Statutory Authority under the Indian Medical Council Act, 1956, or any other existing law to fix the admission capacities of the Medical Colleges;

(ii) Even the provisions of Section 10A, 10B or 10C as inserted in the Principal Act by the Indian Medical Council (Amendment) Act, 1993, does not vest any power in the Council to determine the admission capacities of the Medical Colleges, and,

(iii) Even after 1.6.1992 or for that sake 27.8.1992, the power to fix the admission capacity of a Medical College can be traced only to the State Government u/s 53(10) of the Karnataka Universities Act, 1976 read with Section 4(i)(b) of the Capitation Fee Act and no other authority, may be the Central Government or the MCI has any say in the matter."

16. In the context of the said proposition raised on behalf of the State, under my order dated 5.9.96 and keeping in view the statutory Regulations framed u/s 33 read with Section 19A of the Medical Council Act prescribing "minimum standard requirement for medical college for 100 admissions annually", the State Government was required to place on record through one of its responsible officers as to whether the Government while increasing the admission capacities of the Medical Colleges year after year had been following any norms other than the MCI norms, and, if so, to place the same on record. They were also directed to produce the relevant records to substantiate that they were following any objective norm or guideline for increasing the admission capacities. But, though a further statement of objection has been filed subsequent to the said order, but for the reasons best known to them, the State Government thought it more appropriate to remain silent on the said score and have tried to defend their action by raising various constitutional and legal aspects to which I will be attending a little later.

GROUND REALITIES ALREADY JUDICIALLY NOTICED

17. in the case of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, , the Supreme Court taking note of sudden increase in urban population in the country, the process of industrialization and the corresponding demand of more medical persons to deal with controlling of epidemics and diseases, at the same time looked with concern the mushroom growth of Medical Colleges with insufficient infrastructures which could produce only the quakes. In para 2 the Judgment it has been observed that:

"In these appeals, we are concerned only with the medical education; the Government had to face a serious problem with the coming up of medical colleges which started growing like mushrooms and were charging huge capitation fees to make substantial profits without providing proper medical education and caring precious little for achieving excellence of standards in medical education which, if denuded of such standards, would pose a serious health hazard to the people. Surely, we would not wish that people who could ill-afford to go in for well equipped expensive medical practitioners should be thrown at the mercy of quacks. Similar situation arose in technical, engineering and other kinds of institutions but we would concentrate on the feature and facets of medical education which alone forms the subject-matter of these appeals. We have seen from our experience that each year there is a huge rush for admission to seats in medical colleges for various, which being rather few and insufficient to control or absorb all sorts and kinds of candidates as the well-known Persian proverb "JAYE TANG AST WA MARDUMA BISYAR" (i.e. little space and people many) seems aptly to apply in such a situation..."

18. Again in the case of "Miss MOHINI JAIN v. STATE OF KARNATAKA AND ORS., the Supreme Court while dealing with the vice of charging capitation fees by the Medical Colleges in the State usefully referred to the Presidential Address delivered by Dr. K.S. Chugh, the awardee of "eminent medical man for 1991" at the 14th annual conference of the Association of Physicians in India. The relevant extracts of the said address as under:-

"It is common knowledge that many of the newly started medical colleges charge huge capitation fees. Besides, most of these are poorly equipped and provide scanty facilities for training of students. At best such institutions can be termed as "Teaching Shops". Experience has shown that these colleges admit students who have been unable to gain admission in recognised medical colleges. The result is a back door entry into medical training obtaining solely by the ability to pay one's way through. Even the advice of the Medical Council of India is sidelined in many such cases. The Government must resist all pressures to allow this practice to continue. Admission to medical colleges bought by paying capitation fees must be stopped forthwith and all such existing institutions required to strictly adhere to the Medical Council of India rules.

In the words of my predecessor Dr. V. Parameshvara, "The need of the hour is

better doctors than more doctors, better health education than more education, better health care than more health care delivery.

19. In the above referred Mohini Jain's case, the Supreme Court has noticed with displeasure the happenings in the State of Karnataka in relation to Medical Education. It has been observed that:-

"....The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer Section of the Society. Increasing demand for medical education has led to the opening of large number of medical colleges by private persons, groups and trusts with the permission and recognition of State Governments. The Karnataka State has permitted the opening of several new medical colleges under various private bodies and organisations. These institutions are charging capitation fee as a consideration for admission. Capitation fee is nothing but a price for selling education. The concept of "teaching shops" is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage."

20. As far back as in 1980 the Indian Medical Association in its 56th All India Medical Conference held at Cuttack passed the following resolution:-

"The 56th All India Medical Conference views with great concern the attitude of State Government of Karnataka in permitting the opening of new Medical Colleges under various bodies and organisations in utter disregard, to the recommendations of Medical Council of India and urges upon the authorities and the Government of Karnataka not to permit the opening of any new medical college, by private bodies.

It further condemns the policy of admission on the basis of capitation fees. This commercialisation of medical education endangers the lowering of standards of medical education and encourages bad practice."

MATERIAL REVELATIONS

21. The orders and statements placed on record by the respondents and the enquiry conducted in these proceedings reveal some startling facts. These materials demonstrate that though the in take fixed and approved by the Council on the basis of the infrastructure available with the medical colleges has remained the same since their establishment, but the State Government progressively went on increasing the same by regularising the excess admissions made year after year calling it either "additional in takes" or "regularisation". Regularisation so made were then taken as a basis for increasing the in take of the next year. This can be illustrated by taking the example of one of the medical colleges, say, Adichunchanagiri Institute of Medical Sciences, Bellur:

This college was established in 1985.

Re : Details of academic year-wise in take fixed by the State Government,

Academic Year

G.O.No.& date

in take fixed

Excess admission Additional in take Regularisation

Total

1985-86

1.

HFW 140 MME 85 dt. 12.12.85

130

2.

HFW 87 MME 86 dt. 2.6.86

130 10

140

1986-87

1.

HFW 66 MSF 86 dt. 21.8.86

130

2.

HFW 140 MME 86 dt. 24.10.86

130 20

150

1987-88

1.

HFW 95 MME 87 dt. 4.7.87

150

2.

MFW 166 MME 87 dt. 9.3.88

150 20

170

1988-89

1.

HFW 87 MSF 88 dt. 30.6.88

150

1989-90

1.

HFW 102 MSF 87 dt. 8.6.89

150

2.

HFW 21 MME 90 dt. 11.6.90

150 25

175

1990-91

1.

HFW 191 MSF 90 dt. 24.7.90

150

2.

MFW 296 MSF 90 dt. 15.2.91

150 25

175

1991-92

1.

HFW 328 MSF 91 dt. 15.10.91

175

2.

HFW 829 MSF 91 dt. 8.6.93

175 7

182

1992-93

1.

HFW 67 MPS 92 dt. 10.7.92

175 20

195

1993-94

1.

HFW 56 MPS 93 dt. 14.10.93

195 ...

195

1994-95

1.

MFW 13 MPS 94 dt. 17.9.94

195 ...

195

1995-96

1.

MFW 630 MSF 91 dt. 26.6.95

195 ...

195

Re: in take fixed by the Mysore University

1985-86

130

1986-87 onwards

100

Re: Admission capacity fixed by MCI

as per the Council Inspector's report of Sept. 1993-100.

22. Therefore, it can be reasonably inferred that the reasons prevailing with State Government for increasing and subsequently, maintaining the in take/admission capacities of the medical colleges might have many, except the statutory requirement of maintaining the minimum standards of medical education.

23. The above referred trend is aptly demonstrated by the following graph drawn on the basis of total medical seats available in the State as per the Council, total in take fixed by the State Government and the total number of students admitted in the last ten academic years. It has to be noted that in year 1987-88, Council

in take had increased by 130 due to starting of a new college:

24. The following two tabular statements (See Page No. 3158) further speak for themselves amplifying the gross violence caused to the statutorily defined foundational concept of "minimum standard of medical education".

"BACKLOG VACANCY" - An innovative concept conceived and perpetuated to defeat "UNNIKRISHNAN".

25. The enquiries made in these proceedings have further revealed that the Managements of most of the medical colleges in the State had been permitted to admit students much in excess of the NRI quota fixed by the Supreme Court in "UNNIKRISHNAN'S" case (supra). These excess admissions were being sought to be justified on the basis of an extra statutory self-evolved concept of "backlog vacancies" conveniently designed by the managements of professional colleges on the plea that if the vacancies caused either on transfer or on discontinuance of students in certain years are permitted to be filled up by admitting equal number of students during any subsequent year in excess of the approved in take of such subsequent year it will not be illegal. The logic advanced behind this mathematical adjustment appears to be that the total number of students in the college remain to be same at the intended level on taking into consideration the full admission strength in clinical facilities.

26. From the Circular dated 8th June 1990 of the State Government, it appears that the management had tried to persuade the State Government to take a policy decision in this regard in their favour for approving the admissions against such backlog vacancies, but the government, in the ultimate paragraph of the said Circular found it more convenient to observe that -.1m10.rm55

"Government hereby direct that approval of Government in such cases shall not be necessary in future. However, approval of the Dental Council of India has to be obtained for such cases. The concerned Universities may ratify such excess admissions made against vacancies caused by the departure of the originally admitted students, either on transfer or by discontinuance." Tables I & II showing Actual admissions by medical colleges & in take fixed by the State Government in 1993-94, 1994-95 and 1995-96.

I II

Sl. No

Name of the College

MCI in take

Actual admissions by medical colleges in

in take fixed by the St. Govt. in

93-94

94-95

95-96

93-94

94-95

95-96

1.

ADI-CHUNCHANAGIR1 INST. OF MED. SC.

100

204

209

205

198

195

195

2.

AL-AMEEN MED. COLL.

100

130

133

134

130

130

130

3.

BANGALORE MED. COLL.

150

245

245

242

200

245

245

4.

DR. B.R. AMBEDKAR INST. OF MED. SC.

120

120

122

137

120

120

120

5.

GOVT. MED. COLL., BEILARY

100

125

140

137

130

140

140

6.

GOVT. MED. COLL., MYSORE

100

175

205

203

175

205

205

7.

J.J.M.MED. COLL.

245

345

374

356

328

328

328

8.

J.N.MED. COLL.

130

198

210

208

135

195

195

9.

J.S.S.MED. COLL. AND HOSPITAL

100

232

209

208

200

200

200

10

KARNATAKA INST. OF MED. SC

50

139

147

147

130

147

147

11.

KEMPEGOWDA INST. OF MED. SC.

120

125

127

117

120

120

120

12

M.R.MED. COLL.

100

228

210

204

185

185

185

13

M.S.RAMAISH MED. COLL.

150

134

158

168

118

150

150

14

SRI B.M.PATIL MED. COLL.

150

180

191

200

180

180

180

15

SRI DEVARAJ URS MED. COLL.

100

150

171

152

150

150

150

16.

SRI SIDDARTHA MED. COLL.

130

203

196

194

195

195

195

17.

ST. JOHN'S MED. COLL.

60

60

60

60

60

60

60

TOTAL

2005

2993

3107

3072

2814

2945

2945

27. Subsequently the State Government for some undisclosed reasons under its Circular dated 2.8.95 except the first sentence of the above referred paragraphs of its earlier circular dated 8.6.90 as quoted above, deleted the remaining. This circular reads as under:-

"In Government Circular No. HFW 29 MME 90 dated 8.6.90 the following sentences are deleted in the last para of the above circular. "However, approval of the Dental Council of India has to be obtained for such cases, the concerned Universities may ratify such excess admission made against the vacancies caused by the departure of the originally admitted students either on transfer or by discontinuance."

28. In the case of Monika Pahwa Vs. Director of Medical Education, I had the occasion of examining the permissibility of taking excess admissions on the ground of backlog vacancies. When called upon in that case the Director of Medical Education had filed her personal affidavit stating therein that-

"In the statements filed by me in respect of different colleges, it is stated against some students "Names of students approved under backlog". This is a mistake. I have not approved any backlog seats as I have no power to do so. I have merely certified the statement containing the names of students stated to have been admitted by the colleges to be sent to University, It is left to the colleges to

obtain permission in respect of the so called "backlog admissions" from the Dental Council of India who is the competent authority."

29. But on a reference to the files pertaining to approval of admissions in medical colleges during the academic year 1993-94 to 1995-96 it appears that the then Director of Medical Education had consciously and expressly approved the excess admissions as "backlog vacancies" and acting on the basis of her communications, the universities had permitted the students to appear at the examinations of MBBS course. The following tabular statement reflects the extent of excess admissions made by medical colleges in the State in three academic years namely, 1993-94, 1994-95 and 1995-96:-

Statement showing actual admission made even in excess of Management (NRI) quota fixed by the State Government in 1993-94, 1994-95 and 1995-96.

Sl. No.

Name of the College

1993-94

1994-95

1995-96

NRI (15%) Admission NRI (10%) Admission NRI (15%) Admission

1.

Adichunchanagiri INST. OF MED. SC.

29

34

19

43

29

39

2.

AL-AMEEN MED. COLL.

13

31

13

16

13

17

3.

BANGALORE MED. COLL.

0

0

0

0

0

0

4.

DR. B.R. AMBEDKAR INST. OF MED. SC.

18

18

12

14

18

35

5.

GOVT. MED. COLL., BELLARY

0

0

0

0

0

0

6.

GOVT. MED. COLL.. MYSORE

0

0

0

0

0

0

7.

J.J.M. MED. COLL.

49

64

33

79

49

78

8.

J.N. MED COLL.

29

32

19

34

29

41

9.

J.S.S. MED. COLL & HOSPITAL

30

62

20

29

30

38

10.

KARNATAKA INST. OF MED. SC.

0

0

0

0

0

0

11.

KEMPEGOWDA INST. OF MED. SC.

18

24

12

20

18

15

12.

M.R. MED. COLL.

28

71

18

43

28

47

13.

M.S. RAMAIAH MED. COLL.

18

30

15

24

22

42

14.

SRI B.M. PATIL MED. COLL.

27

27

18

29

27

50

15.

SRI DEVARAJ URS MED. COLL.

23

35

15

36

22

25

16

SRI SIDDARTHA MED. COLL.

29

38

19

19

29

30

17.

ST. JOHN'S MED. COLL.

0

0

0

0

0

0

TOTAL

311

466

213

386

314

457

30. From the above tabular statement it further transpires that the admissions taken by the Colleges and approved by the Director of Medical Education and the University authorities where in flagrant violation of the directions issued by the Supreme Court in the case of UNNIKRISHAN AND TI.M.A. PAI FOUNDATION v. STATE OF KARNATAKA. To illustrate the said fact, let us take the case of Adichunchanagiri Medical College. For the academic year 1993-94 keeping the view its in take, it could have admitted 15% thereof being 29 students but it has admitted 34, thus there was an excess of 5 admissions. Similarly, in 1994-95 and 1995-96 it had admitted 24 and 10 students in excess respectively. Now even for the sake of argument, if the concept of backlog vacancy is taken to be ground for an increase in the in take of the college for the given academic year, still the same was required to be notified to the Government before hand and should have been filled up through the CET only except for the percentage prescribed for NRI quota. If that process would have been adopted, the college management could have been entitled to admit hardly five students in management (NRI) quota out of alleged backlog vacancies for all the above academic years, whereas against the same they have very conveniently admitted 39 students. This innovative method was clearly evolved in an attempt to over reach the law laid down by the Apex Court in the cases of Unnikrishnan and T.M.A. Pai Foundation in order to eradicate the evil of capitation fee. It seems to me that what has been stated by the Supreme Court in its order dated 10.5.1995 in the case of T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, , equally applies here also. The Supreme Court while dealing with violations in the context of fixing up of NRI quota by certain officers of the State of Maharastra, has held that:

"They are senior and experienced officers and must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the Apex Court for that matter, any Court - should not be trifled with. We have found here in above that they have acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical Colleges."

31. In the case of Monika Pahwa (supra), after discussing the above aspects and

by specifically taking into account Section 10B(2) of the Dentist Act, I had held that:-

"From the discussion made above, it is glaringly clear that the managements of the Dental Colleges have no authority in law to give admissions to any candidate in excess of permissible in take of the given year on the alleged ground of backlog vacancies."

32. The said judgment in the case of Monika Pahwa⁷ was taken in appeal before the Division Bench in W.P.No. 793 to 803/86 disposed of on 12.6.96., The above view taken by me that admissions given above as against the alleged backlog vacancies tantamount to excess admissions and were hit by the provisions of Section 10A of the Central Act was upheld, But liberty was given to the respective managements to approach the Dental Council of India to examine whether such admissions would amount to excess in take. The respective management were directed to furnish necessary information to the Dental Council within a period of 2 weeks from the date of Judgment, whereupon the Council was required to examine the matter within a period of 8 weeks therefrom and thereafter within eight weeks therefrom Central Government was to take its decision. It was further observed that until the disposal of the matter by the said authorities, the course of the study commenced by the students shall not be disturbed.

33. In the present proceedings, now the State Government through a memo filed by the Government Advocate has placed on record the Government Circular dated 7.8.1996 whereunder it has been communicated to ail the Universities and colleges that the "Government has decided to discontinue the practice of allowing backlog vacancies in first MBBS and first BDS in various private colleges against the vacancies caused by the departure of the originally admitted students for one reason or another".

34. In the above context, the Central Government in its statement of objections filed in the present proceedings has stated that -

".....In regard to "Backlog" cases, it is submitted that the matter came up only recently during discussions held by various authorities of the Government of Karnataka with the officers of the Ministry of Health and Family Welfare. No specific applications under the provisions, the amended Acts, has been received except in the case of Sri. Nijalingappa Institute of Dental Sciences, Hassan. That application has been processed and has been returned to the applicant on the ground of being in completing in terms of the provisions of the regulations framed by the Dental Council of India. In the absence of any details about shortfall in yearly in take on account of migration/drop-out and other factors about availability of infrastructure for the given number of students allowed to remain on the rolls of the college it is not possible to give any specific comments. The State Government authorities during the meetings have been asked to furnish such details on a case to case basis to enable this Ministry to take a view

in the matter."

35. Therefore, the material aspect is that if the students admitted against the alleged backlog vacancies are declared by the Central Government as having been admitted in excess of the permissible admission capacities, then possibly they cannot avoid the mandatory consequences contemplated in Section 10B(3) of the Central Act. Be that as it may, at least for that reason the State Government, Universities and or the managements are not going to loose anything, may any thing happen to the students so admitted.

PARLIAMENT TAKES NOTE OF THE VICES

36. The Parliament took serious note of the tendencies emanating from different quarters who were expected to act in a more responsible manner to maintain the minimum standards of education and in order to curb the tendencies made more stringent provisions by amending the Indian Medical Council Act with effect from 27th of August 1992 by enacting the Indian Medical Council (Amendment) Act, 1993 which is preceded by two ordinances Nos. 13/92 and 2/93 as operating at the material time warranted minimum deterrent actions. The statement of objects and reasons of the said amendment to the extent it reads thus:-

"The Indian Medical Council Act, 1956 was enacted for the purpose of reconstituting the Medical Council of India and the maintenance of the Medical Register for India and for matters connected therewith.

2. The experience of the working of the 1956 Act had brought to light certain inadequacies. The Central Government had introduced a comprehensive Bill to amend the 1956 Act in Rajya Sabha on the 26th August 1987 and the Joint committee submitted its report in 1989 recommending further amendments to the Bill. The matter could not be processed further due to dissolution of the Lok Sabha and change in government. However, by early 1992 it became necessary to reconsider some of the recommendations contained in the Joint Committee's report keeping in view the current requirements of medical education. While the matter was in an advanced stage of consideration, the Supreme Court of India in the Judgment in MOHINI JAIN v. GOVERNMENT OF KARNATAKA on 30th July, 1992, held that educational institutions cannot charge capitation fee and that education, including higher education, is a fundamental right. A number of private institutions have challenged the above mentioned judgment and sought a review by the Constitution Bench of the Supreme Court. The Supreme Court of India have since pronounced the judgment on 4th February 1993. The implications of the judgment will have to be studied. In the circumstances, Government, has, therefore, considered it advisable not to proceed with 1987 Bill as many of the matters covered by the Bill wilt become subject of review by the Supreme Court.

Meanwhile, it had been noticed that so me State Government were giving approvals for the opening of new medical colleges on their own, without insisting on the provision of basic prerequisites of hospital, equipment, laboratories or

qualified faculty members etc., In certain cases, after the colleges gave admissions to students they began exercising the combined pressure of the management, students and their families for grant of approval to the medical colleges by the Medical Council of India,

4. In order to curb such mushroom growth of medical colleges, the President promulgated the Indian Medical Council (Amendment) Ordinance 1992 (Ord. 13/92). on the 27th August 1992 to amend the Indian Medical Council Act. 1956 by incorporating therein provisions for prior permission of the Central Government for establishing any new medical college and for starting any new or higher courses of study or increasing admission capacity in any course of study or training including, post graduate course of study in any existing medical college."

Re: Legislative competence:

37. Since, the Learned Advocate General appearing for the state of Karnataka as also Sri Narasimha Murthy, Learned Sr.Council appearing for the respondent Devaraj Urs Medical College have raised the issues of legislative competence of the Parliament pertaining to the regulation of admission capacities of Medical Colleges, let me first examine the respective legislative competence of the Parliament and the State legislature relating to the topic "Education" and the related principles of constitutional law.

38. The questions raised in the said context are:

(i) whether parliament is competent to regulate admission capacities of educational institutions including medical and dental colleges by incorporating Section 10A, 10B and 10C in the Indian Medical Council Act as has been done with effect from 27.8.1992,

(ii) whether, keeping in view the said amendment in the Central Act, the inconsistent provisions contained in the existing State legislations have become void on account repugnancy and only the law made by the Parliament will prevail though the State Capitation Fee Act of 1984 had received the assent of the President,

(iii) whether despite being competent to legislate on all the aspects of the topic "Education", the Parliament had no authority to amend the Central Act so as to cover some more aspects of the said topic, which were either not possible and/or intended to be covered when the Act was originally made in 1956.

39. Entry 66 of List I i.e., the Union List of 7th Schedule of the Constitution reads as follows:-

"66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

This entry has remained unchanged since the inception of the Constitution.

40. Before the Constitution (Forty-second Amendment) Act, 1976, which came into force with effect from 3.1.1977, Entry 11 in List II, i.e., the State List was as follows:

"11. Education including universities subject to the provisions of entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 63 of List I related to the Benaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of Article 371-E, i.e. Central University in Andhra Pradesh, and other institutions declared by Parliament by law to be an institution of national importance. Entry 64 of the said list refers to institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance and Entry 65 relates to the Union agencies and institutions for (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.

41. Entry 25 of List III, i.e., the Concurrent List prior to the said Constitution Amendment read as follows:

"25. Vocational and technical training of labour.""

After Amendment it read as follows:

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of the List I; vocational and technical training of labour."

42. Keeping in view the above referred Legislative entries, the Supreme Court, in case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , has held that (Pr.12):

"The subject" coordination and determination Of standards in institutions for higher Education or Research and Scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of the List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to co-ordination and determination of standards in institutions has always been the preserve of Parliament."

43. Again recently in the case of Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others, , the Supreme Court

has once again in the context of the amendment of the Central (Amendment) Act of 1993 itself, after noticing the above referred legislative entries pertaining to "Education has held that (pr. 17):

"In view of the said amendment, the legislative power in respect of education is now conferred exclusively on Parliament in respect of matters specified in Entries 63 to 66 of List I and concurrently in Parliament and State legislatures in respect of matters specified in Entry 25 of List III."

44. So far as the first question is concerned, various decisions of the Supreme Court have been cited where-under it had been held that under the provisions of the Central Act, it was not permissible on the part of the Council to regulate the process of admission to medical courses. As I could read, in none of those cases, the question as to whether the aspect of fixation or increase of intake capacities of medical colleges was covered by Entry 66 of Union List or not, had fallen for consideration. But in any view of the matter, in my opinion, for the purposes of the present proceedings any exercise to answer that question will be only of academic interest because now in view of Entry 66 of List I read with Entry 25 of List III, the Parliament undoubtedly possessed of competence to legislate on all the aspects of the topic "Education".

45. So far as the second question is concerned, in the case of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamikal Medical Educational & Charitable Trust (supra), the Supreme Court, keeping in view the provisions of Article 254 of the Constitution has categorically declared that (pr.12):

"The fact that the State Act has received the assent of the President would be of no avail because repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act."

46. In the said view of the matter, there cannot be any escape from holding that the State Universities Act and Capitation Fee Act, if found inconsistent and repugnant to the Central Act in an given aspect including that pertaining to fixation or regulation of admission capacities of the medical colleges, then the same will be void and inoperative to the said extent.

47. So far as the third aspect is concerned, it is a well established principle of constitutional law that the power of a legislature to repeal, modify or alter laws is, as a rule, co-extensive with its powers of direct legislation. It cannot only amend or repeal earlier statutes, but may also modify or over ride the common law relating to subjects within its legislative competence *Sajjan Singh Vs. State of Rajasthan*, . It is also well established that in defining the validity of a law questioned on ground of legislative incompetence, the State can always show that the law was supportable under any other entry within the competence of the legislature. Indeed in supporting a legislation sustenance could be drawn and had from a number of entries. The legislation could be a composite legislation drawing upon several entries. *UJAGAR PRINTS (II) v. UNION OF INDIA* .

48. I may also notice here that so far as the object spelled out by the legislature while enacting a law is concerned, though, the object and the scheme so spelled out may have relevance for the construction and interpretation of the provisions thereof or for testing the reasonableness of its various provisions or for examining the validity of subordinate legislations made thereunder, but the object so initially spelled out cannot in any way control or limit the competence of the legislature to amend or enlarge the object and scope thereof.

49. For the aforesaid reasons, in my considered opinion, none of the grounds raised at the bar, for impugning the provisions of the Central Amending Act of 1993 can be held to be of any substance and therefore has to be rejected.

THE CENTRAL AND STATE LEGISLATIONS

50. Having answered the questions pertaining to legislative competence of the Parliament to enact and incorporate Sections 10A, 10B and 10C in the Central Act, now I proceed to examine whether, keeping in view the provisions of the central Act as amended in 1993, the State Universities Act and the Capitation Fee Act, the power to fix the in take/admission capacities of the medical colleges still lies in the exclusively statutory domain of the State Government under the provisions of the State Acts and neither the Central Government nor the Council have any say in the matter under the provisions of the Central Act.

51. The Central Act was enacted "to provide for Constitution of Medical Council of India and maintenance of medical register of India and for the matters connected therewith". The scope of this Act was enlarged by Act 24 of 1964 with a view to remove lacunae in the Act in order to enable the Council to more effectively discharge its functions. Pursuant to this amendment, Section 9A was incorporated in the Act providing for prescribing the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by universities or medical institutions in India, Section 15 of the Act was also amended to disqualify the holder of unrecognised medical qualification to practice medicine in any State or to hold any office as physician or surgeon and the like. The contravention of the provision was declared to be an offense, punishable with imprisonment and/or with fine. Necessary amendments were also made in Section 33 of the Act to achieve the said goal. But of late Parliament having felt that even making of the said provisions and providing for withdrawal of recognition of medical qualifications u/s 19 to ensure the compliance with the requirement of minimum standard of medical education has not proved sufficient to remedy the mischief overpowering the field of medical education, it came out with the impugned Central Amendment Act of 1993 subjecting the very right to establish a medical college or the opening of a new or higher courses of study or training for award of any recognised medical qualification or increase in its admission capacity relating to the said courses to a strict vigilance of the Central Government in the form of prior permission for the same, so as to force the maintenance of minimum standard of medical education. Any medical qualification granted to any student

in violation of the said provision is not to be treated as recognised medical qualification for the purpose of the Central Act.

52. Since all the medical colleges in the State had been admittedly established prior to 1.6.1992, the only question, in the present pertains to the ascertainment of the legally permissible admission capacities of such colleges. For the said purpose, to start with, I may usefully first quote the relevant provision contained in Sections 10A, 10B and 10C of the Central Act which are to the following effect:

"10A.(1) Notwithstanding anything contained in this Act or any other law for the time being in force:-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training).

except with the previous permission of the Central Government obtained in accordance with the provisions of this Section.

Explanation 1 - For the purposes of this Section, "person" includes any University or a trust but does not include the Central Government,

Explanation 2 - For the purposes of this Section, "admission capacity", in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2)(a) Every person or medical college shall, for the purpose of obtaining permission under Sub-section (1), submits to the Central government a scheme in accordance with the provisions of Clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in Clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under Sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may.-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity, give a reasonable opportunity to the person or

college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any specified by the Council;

(b) consider the scheme, having regard to the factors referred to in Sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under subsection (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in Sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under Sub-section (1):

Provided that no scheme shall be disapproval by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under Sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under Sub-section (2) no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and, accordingly, the permission of the Central Government required under Sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in Sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

(7) The Council, while making its recommendations under Clause (b) of Sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under Sub-section (4) shall have due regard to the following factors, namely:-

(a) Whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum of standards of medical education as prescribed by the Council u/s 19A, or as the case may be, u/s 20 in the case of post-graduate medical education;

(b) Whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) Whether necessary facilities in respect of staff, equipment accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time limit specified in the scheme;

(d) Whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) Whether any arrangement has been made or programme drawn too impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned,

10-B(1). Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognized medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of Section 10A no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation - For the purposes of this Section, the criteria for identifying, a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

10C. (1) If, after the 1st day of June; 1992, and on and before the commencement of the Indian Medical Council (Amendment) Act, 1993 any person has established a medical college or any medical college has opened a new or higher course of study or training or increase the admission capacity, such person or medical college, as the case may be, shall seek, within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1993, the permission of the Central Government in accordance with the provisions of Section 10A.

(2) If any person or medical college, as the case may be, fails to seek the permission under Sub-section 10B shall apply, so far as may be, as if, permission of the Central Government u/s 10A has been refused."

53. A bare reading of Section 10A(1)(b)(ii) as also 10C(3) clearly shows that no medical college can increase its admission capacity in any course of study and training except with the previous permission of the Central Government obtained in accordance with the provisions of Sub-section(2) to (8) of Section 10A.

54. Now turning to the object of the Central Amendment Act of 1993 and the provisions contained in Section 10A(1) thereof, it becomes more than evident that the Parliament has simultaneously taken over three more aspects of medical education in its fold with effect from 1.6.1992 completely denuding the State Legislature to have any authority in respect of those. These are -

I) Establishment of new medical Colleges.

II) Opening of new or higher course of study or training in medical colleges established before 1.6.92, and,

III) Increase in admission capacity of medical colleges established before 1.6.92.

55. In the present proceedings we are concerned with the third aspect as noticed above. The Supreme Court in the case of "Thirumurga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust (supra), while dealing with the establishment aspect of new medical colleges has held that:-

"It would thus appear that in Section 10A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the Country. No further scope is left for the operation of the State Legislation in the said field which is fully covered by the law made by Parliament. Applying the tests laid down by this Court, it must be held that the proviso to Sub-section(5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college is repugnant to Section 10A inserted in the Indian Medical Council Act, 1956, by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10A, viz., establishment of a new medical college and would not extend to establishment of other colleges."

56. As the Supreme Court has already declared the law in respect of the first aspect viz., the establishment of new medical colleges, in my opinion, the second and third aspects noticed above have also to be held as covered by the law so declared since all the three aspects are the part of the same Parliamentary scheme and are subjected to the same constitutional limitations.

57. Now coming specifically to the "increase in admission capacity", even at the cost of repetition it has to be noted that u/s 10A(b)(ii) it has been declared by the Parliament in mandatory, unequivocal and express terms that notwithstanding anything contained in the Central Act or any other law, which will definitely include the State laws, for the time being, in force, no medical college shall increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provision of the said Section.

58. The language of Section 10A(1) admits of no ambiguity and therefore no rule of interpretation needs to be employed to ascertain its true meaning. With due respect to the learned Advocate General, who has made all endeavours with all his ingenuity and legal talents to impress that the mandate contained in Section 10A(1)(b)(ii) will apply only to the colleges which have been established after 1.6.1992 and the competence or authority to regulate and or to fix the admission capacities of the medical colleges situated in the State of Karnataka which had been established prior to 1.6.1992 will lie exclusively with the State Government, keeping in view the provisions of Section 4 of State Capitation Fee Act and Section 53(10) of the State Universities Act. But I find myself unable to agree with the said proposition. I have no hesitation in holding that after incorporation of Section 10A in the Central Act the provisions of the State Acts to the extent these are inconsistent with the Central Act, have become void and inoperative, thereby completely stripping off the powers of the State Government and the Universities in respect of all the three aspects as noticed above.

59. Having so held, the next question to be considered is that keeping in view the object of incorporating Section 10A, 10B and 10C in the Central Act and the language employed therein, what has to be the true connotation of the expression "increase its admission capacity".

60. According to the New Lexicon Webster Dictionary the word "increase" means to become greater in size, amount, number, value, degree etc. According to the Random House Dictionary the said term means to make greater in any respect, etc. According to Black's Law Dictionary it means enlargement, increment, addition etc. Therefore for ascertaining whether the admission capacity of any college is deemed to have been increased for the purpose of Section 10A of the Central Act, there has to be a benchmark of admission capacity i.e., the standard thereof with which the increase therein can be compared with.

61. Now the material and the crucial question is as to whether the admission capacity of a medical college as fixed on or before 1.6.1992 by the State

Government will form the benchmark for finding out the increase therein for the purpose of applying the regulatory provisions contained in Section 10A of the Central Act or the admission capacities fixed by the Council, with reference to the minimum standard of medical education prescribed u/s 19A of the said Act, will form the benchmark for the said purpose.

62. In my opinion, the Parliament having fully delved into the said aspect, has very clearly provided that it is the admission capacity which has been fixed by the Council, will form the benchmark for the purpose of Section 10A of the Central Act. It is so because of the Explanation 2 to Section 10A(1) of the said Act which provides that for the purpose of the said Section "admission capacity" mean the maximum number of students that may be fixed by the Council from time to time for being admitted to the medical course in a given college. The Parliament has not given any credence to the admission capacities or intakes fixed by any State Government or the Universities which was for the obvious reasons, as noticed in the statement of objects and reasons of the Amendment, namely, that the State Governments were not adhering to the requirements of maintaining even the minimum standard of medical education while fixing the admission capacities and were working under various pressures. Therefore, it has to be conclusively held that it is the admission capacity which is fixed by the Council from time to time will form the benchmark for determining any increase therein for the purpose of Section 10A(1) requiring previous permission from the Central Government and any violation thereof will visit the consequences envisaged u/s 10B(3) of the Central Act.

63. The next question is whether the admission capacity of a medical college determined by the Council in the 2nd explanation to Section 10A(1) is one time exercise or it can be so done from time to time i.e., more than once. In the aforesaid explanation the Parliament has expressly used phrase "time to time". It is a well settled rule of statutory construction that "in the interpretation of statutes the Court always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect". *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, . " (See *J.K. Cotton Mills*) It appears to me that the power to determine admission capacity from time to time has been advisedly provided in the 2nd Explanation to Section 10A(1) and is well thought of measure to ensure maintenance of minimum standards by the medical colleges. It is for the reason that under the Scheme of the Central Act, the power to inspect and supervise the maintenance of minimum standards has been conferred only on the Council. There is no such power with any other authority including the Central Government. Therefore, even after the grant of permission by the Central Government to increase the admission capacity, if subsequently the Council, pursuant to inspection and/or other relevant materials on records resolves that the infrastructure in college has fallen short of the required minimum standards entitling it to maintain the approved level of admission capacity, then the college cannot be permitted to admit students

beyond that level unless it undertakes the statutory process contemplated u/s 10A(1) seeking approval of the Central Government for increasing its admission level. This in built legislative mechanism of constant vigil and overseeing the infrastructural requirements expected of the medical colleges is salutary and is aptly befitting to the object of the Act. It also ensures that the discretion in the matters of determining the admission capacities is not concentrated in any one authority thereby which minimises the chances of abuses in this regard.

64. The last question which had cropped up in this context of Explanation II to Section 10A is as to whether the Council can fix the admission capacity as the benchmark for activating the provisions of Section 10A(1)(b)(ii) of the Central Act on the basis of the inspections conducted prior to 1.6.1992. In my opinion, "yes". The reasons are various.

65. Firstly, the Council resolves to fix the admission capacity of a medical college on the basis of the report of its inspectors and visitors and if subsequent to such inspection no claim is laid by the college concerned before the Council that it has improved its infrastructure to have higher admission capacity, Council can always presume and resolve that the infrastructure of the college has remained unaltered since the date of last inspection, irrespective of the fact as to when it was conducted.

66. Secondly, it is a matter of record that the resolutions passed by the Council determining the admission capacities of the colleges have always been duly communicated to the colleges as well as the affiliating universities, providing ample opportunities to them to seek a review thereof by the Council itself by placing relevant materials or challenge the same before the appropriate judicial forum. But if the colleges choose to accept the same, expressly or impliedly, they can be permitted to avoid the legal consequences thereof of praying before this Court to assess their infrastructure in the writ jurisdiction. In my opinion, in such situations, their remedy lies only u/s 10A of the Central Act by way of filling the statutory Scheme.

67. In the present case, each of the medical colleges in the State was informed of their admission capacity as fixed by the Council as is evident from the communication dated 21.11.1994 quoted in extenso in para.8 herein except to report No. 4, which was separately communicated of its admission capacity under Council's letter dated 13.9.1994 based on inspector's report of Nov., 1993.

68. Having answered the principal question, now keeping in view the discussions made at the Bar in respect of certain material ancillary issues arising in the context of the Central Act, I feel it necessary to discuss and express myself on those issues as well, since they have material bearing on day to day administration and maintenance of medical education. These issues are:

(i) whether Regulations framed under the Central Act are mandatory or only recommendatory,

- (ii) what are the respective functions and powers of the Council and Central and State Governments under the Central Act.
- (iii) whether the Government, both Central or State, can exercise executive powers in relation to any aspect of medical education.
- (iv) what concepts the expression "admission capacity", "eligibility for seeking admission" and "the regulation of the process of admission" bear in context of Education Law,
- (v) what are the powers of the High Court under Article 226 of the Constitution in case of admissions made in excess of permissible in take,
- (vi) whether the High Court, under its jurisdiction, can invoke judicial sympathy to approve or regularise excess or illegal admissions,
- (vii) How the law's delay plays wonders in education matters

Regulations: mandatory or recommendatory

69. Section 19A and 33 of the Central Act provides for making of regulations by the Council. These sections, to the extent those are material for the present purposes, are being quoted hereunder:

"Section 19A. Minimum standards of medical education-- (1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-graduate medical qualifications) by Universities or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall, before submitting the regulations or amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of copies aforesaid.

(3)....."

"Section 33. Power to make regulations - The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power; such regulations may provide for -

(a) (fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under Clause (b) of Sub-section (2) of Section 10A;

(fb) any other factors under Clause (g) of Sub-section (7) of Section 10A;

(fc) the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to Sub-section (3) of Section 10B".

(g)

(h)

(i)

(j) the courses and period of study and of practical training to be undertaken, the subjects of the examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;"

70. Pursuant to the powers conferred under Sections 19A and 33 of the Central Act, the Council has framed the following regulations material for the present purposes, namely,

(i) minimum standard requirement for a medical college for 100 admissions annually, (approved as regulations by the Central Government on 3.11.1977)

(ii) minimum recommendations on undergraduate medical qualifications,

(approved as regulations by the Central Government on 30.11.1977)

(iii) establishment of new medical colleges, opening of higher courses of study and increase of admission capacity in medical colleges regulation, 1993,

(enforced from 29.9.1993)

71. The regulation prescribing minimum standard of medical education is directly referable to Section 19A read with Section 33(k) of the Central Act and any violation thereof has to result in the penalty of withdrawal of recognition of medical qualification granted to a student of the college or institution concerned which do not conform to standards so prescribed under and in accordance with provisions of Section 19A of the Central Act. Therefore, the said regulation is clearly mandatory in nature and not merely recommendatory as was sought to be suggested by some of learned Counsel appearing for the managements.

72. So far as the regulation of 1977 is concerned, the Regulation I thereof prescribes the conditions or qualifications for admission into medical courses. But, Regulation II thereof provides for selection of students. The Supreme Court, in the case of State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, , by referring to the enabling provision contained in Section 33 of the Central Act, has held that the Regulation I is mandatory since it was competent for the Council to frame such regulation but Regulation II providing for regulating the process of admission to the course not being referable to any of the Clauses u/s 33 was, for that reason, held to be directory and in the nature of recommendation having no statutory force.

73. So far as the regulations of 1993 are concerned, these are ex facie

mandatory having been framed under the express authority of the Parliament u/s 10A(2)(b) read with Section 33(fa), (fb), (fc) of the Central Act. The violation of the requirements contained in the regulations are to result in adverse consequences as provided u/s 10B of the Central Act.

MEDICAL COUNCIL OF INDIA: POWERS AND FUNCTIONS

74. Council has been constituted u/s 3 of the Central Act. Section 6 has given it the status of a body corporate. Elaborate provisions have been made for the terms of its Office bearers, its meetings, committees and servants. Section 10 provides for an executive body. The Supreme Court, keeping in view the functions assigned to the Council, in the case of *State of Kerala Vs. Kumari T.P. Roshana and Another*, has observed that:-

"The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-Standard entrance qualifications for medical course."

75. In the said context, the relevant provisions of the Central Act may be examined to ascertain the precise functions assigned to Council in relation to medical education. Under Sections 11,12,13 and 14, the Council discharges a consultative function to enable the Central Government to recognise a medical qualification. u/s 16, it has been empowered to require information as to courses of study and examinations from every university or medical institution in India which grants a medical qualification. u/s 18 it can appoint visitors to inspect any medical college, institution, hospital or other institution where a medical education is given or to attend any examination held by the University or medical institution. u/s 19 the Council can, upon report of the Committee or Visitor, represent to the Central Government for withdrawal of recognition of any medical qualification, if it appears to the Council that such institution or college do not conform to the standards prescribed by it. Explanation II to Section 10A(1) of the Act gives recognition of the admission capacity fixed by the Council for the purpose of the said provision. Under Sub-section (2) of Section 10 the scheme submitted to the Central Government is to be referred to the Council for its recommendations made after following the procedures contained in Sub-sections (3) to (7). Section 19A, explanation to Sections 10B and 33 empowers the Council, subject to the procedures laid down therein, to frame regulations on various aspects of medical education.

76. From a conspectus of the above provisions it is, inter alia, clear that the Council though has the power of inspection and functions as a recommendatory or consultative body to advise the Central Government on various aspects, but

has no independent authority to i) recognise or withdraw the recognition of the medical qualifications, ii) Grant approval or recognition to any medical college. Even the scheme contemplated under Sections 10A and 10C cannot be filed before or accepted by the Council directly. Similarly, it has no power to approve or disapprove the starting of new or higher courses of study or increase admission capacities which power has been exclusively conferred on the Central Government.

EXECUTIVE POWER OF THE GOVERNMENT IN RELATION TO MEDICAL EDUCATION

77. Under Articles 73(1) and 162 of the Constitution to the extent it is relevant for the present purposes defines the extent of executive powers of the Union and the State. These read as under:-

"73(1). Subject to the provisions of this constitution, the executive power of the Union shall extend-

(a) to the matters with respect to which Parliament has power to make laws; and ..."

"162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

78. In the case of State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc., , the Supreme Court has held that "the executive have a power to make any regulation which should have the effect of a law so long as it does not contravene any legislation already covering the field..."

79. Therefore keeping in view the provisions of the Constitution as well as the law laid down by the Apex Court, it is clear that neither the Central Government nor the State Government can exercise its executive powers in relation to the aspects of medical education which are covered by the specific legislations, may be Central or State.

80. In the above context, it may be clarified that under the Central Act, the State Government has not been as signed with any decision making authority in respect of any of the matters covered therein though under Sections 19(3) and 19A it has been assigned recommendatory and consultative roles respectively.

81. It may further be clarified that even the Central Government, keeping in view the provisions of the Central Act, can only discharge its functions to the extent and in any manner as assigned by the Parliament and it cannot travel beyond the same under the assumption of having any inherent or ancillary powers.

CONCEPTS SURROUNDING "ADMISSION"

82. Admission to a medical college and for that sake, any educational institution has three facets, viz.,

- (i) the admission capacity or in take of the college
- (ii) eligibility of the candidate to seek admissions, and,
- (iii) the process of selection from amongst the eligible candidates against the fixed in take.

83. So far as the fixation of in take of the college is concerned, it exclusively depends on the merit of institutional infrastructure available. Therefore, the fixation of in take or admission capacity of a college is inextricably inter-woven with the requirement of maintaining the minimum standard of education. Such a fixation is not depended on the eligibility or merit of the candidates who may inspire to take admission to the medical course in the college concerned.

84. In the case of State of Punjab and others Vs. Renuka Singla and others, it has been held by the Supreme Court that:-

"It cannot be disputed that technical education including medical education requires infrastructure to cope with the requirement of giving proper education to students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the MCI or DCI."

85. So far as the eligibility for admission and the process of selection are concerned, it has elaborately been discussed by Supreme Court in the State of Madhya Pradesh v. Nivedita Jain (supra). In pr.18 of the judgment, it has been held that:-

"The eligibility of a candidate to enter into a medical course depends upon his having minimum educational qualifications required of a student as per the regulations framed by the Council."

86. But so far as the process of selection is concerned, it has been held that:-

"..As the number of candidates seeking admission to medical colleges largely exceed the number of vacancies available to such candidates for admission, some kind of procedure has to be evolved for such selection. The process of selection of candidates for admission to medical collage out of the candidates eligible for admission for filling up the limited vacancies has no real bearing on the question of eligibility or qualification for admission or on the standard of medical education. The standard of medical education really comes into the picture in the course of studies in the medical colleges or institutions after the selection and admission of candidates into medical colleges and institutions. Students who satisfy the requirement of Regulation I become qualified or eligible to seek admission into the Medical course. Regulation I prescribes the requisites

which have to be satisfied to enable every student to become eligible or qualified to seek admission and the process of selection comes thereafter."

HIGH COURT'S JURISDICTION UNDER ARTICLE 226 IN RESPECT OF ADMISSIONS

87. Before closing, I feel it to be my duty to dispel the misconceptions that the High Court under Article 226 has inherent powers to even regularise the admissions granted in excess of the permissible admission capacities of educational institutions, including Medical or Dental Colleges, by directing the statutory authorities to disobey their own laws and even at the detriment of the educational interest, which may have adverse effect on the entire social structure and the health and well being of its member.

88. The said aspect has become necessary to be dealt with keeping in view the statement made by the learned Advocate General which has been noticed by me in the order passed in the forenoon of 29.8.1996. This which reads thus (Para 2):

"The learned Advocate General on instructions states that notwithstanding the pendency of the present enquiry, the purpose where of has been made amply dear by the order dt. 26.8.1996, the Government still proposes to go ahead with the admission process, since according to him stopping of the counseling may cause inconvenience to the inspiring candidates. His submission is that even if the admissions are given to the student in colleges which are ultimately found not to be entitled to admit the students or that the seats are allotted in excess of permissible in take, which is yet to be determined in the present proceedings, appropriate remedial measures can be initiated by taking up the matter either with the Central Government or by invoking the writ jurisdiction of this Court or by approaching the Supreme Court for regularisation of such irregular/illegal admissions."

89. In the case of STATE OF PUNJAB v. RENUKA SINGALA (supra), it has been held that (para 8 at Page 597):-

"The admission in Medical Course throughout India is governed by different statutory provisions including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim of final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students..."

90. In State of Maharashtra Vs. Vikas Sahebrao Roundale and others, while negating the question as to whether students of an unauthorised college were

entitled to seek a direction from Court to permit them to sit in examination, the Supreme Court observed:-

"Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Article 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.."

91. Again very recently, the Supreme Court has once again held out a mark of caution couched in rather a some what strong language, against the exercise of writ jurisdiction by the High Courts in educational matters in the case of Dental Council of India v. Harpreet Kaur Bal of the judgment it has been held that:-

"There are many pronouncements of this Court cautioning against exercise of jurisdiction characterised more by benevolence than on settled legal principles. A relief must be such as could be considered permissible in law and worked out by the application of legally recognised principles. The decision must have legitimacy of legal reasoning and should not incur the criticism of lacking objectivity of purpose and rational and legal justification, Where an educational institution embarks upon granting admissions without the requisite affiliation and recognition and the students join the institution with their eyes wide open as to the lack of legitimacy in the admission, it would be preposterous to direct the University to hold examinations for the benefit of such students. We cannot sufficiently deplore this attitude and approach. The High Court has, by its order, simply bolstered the hopes and aspirations of these students without any means of gratifying these expectation a manner known to law....."

92. In my opinion. I cannot answer the remedy which was suggested by the learned Advocate General as noticed above, for regularisation of illegal admissions in a manner better than it has been answered to by the Supreme Court.

LAW'S DELAY AND COURT'S PROBLEM

93. It has been suggested at the Bar, on behalf of the State Government as also by some of the learned Counsel appearing for the colleges that at times the illegal admissions get a seal of sanction because of delay in judicial proceedings. The plea cannot be out rightly brushed aside. The Supreme Court, in the case of Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, had taken note of the said fact. In para 4 of the report, it has been noticed that :-

".....Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But, the problem which the Courts are faced with in these case is, that it is not

until a period of six months or a year elapses after the admissions are made that the intervention of the Court comes into play. Writ Petitions involving a challenge to such admissions are generally taken up by the High Courts as promptly as possible but even then, students who are wrongly admitted finish one or two semesters of the course by the time the decision of the High Court is pronounced. A further appeal to this Court consumes still more time, which creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul; once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions."

94. In the case of *K.P. GANGULY v. UNIVERSITY OF LUCKNOW* the Supreme Court again took notice of law's delay resulting in *fait accompli* in the matters of admission to educational courses and suggested that interim orders granting or permitting provisional admissions should not be passed unless on hearing the other side a strong *prima facie* case is found to have been made out. In para 3 of the judgment, it has been observed that:

"With this short prelude, now to the facts of the case which disclose a sad story indeed - not because those in charge of the institutions committed errors but because the Courts start directing the authorities to grant provisional admissions to students even if they did not deserve the same in some cases. Experience has shown that in view of the huge accumulation of the arrears in Courts, it takes a long time for the petitions to be disposed off, hence we have evolved the practice of forcing the authorities to get to grant provisional admissions which has resulted in a piquant and pungent situation because by the time the case comes up for hearing, the rejected candidates having completed their course and having appeared at the examination with every hope of success become eligible for admission to the higher course in case of success though the Court may ultimately find that their initial rejection was justified. Such a situation becomes a sort of a *fait accompli* for those in charge of the institutions as a result of which the candidates are admitted in the deference to the desire of the Court by increasing or creating vacancies even in the absence of suitable and proper facilities to train the extra candidates. This results in an anathema and a dilemma for which there is hardly any "remedy" The present cases are a clear illustration of this problem. Our suggestion, therefore, is that whenever a Writ Petition is filed provisionally admission should not be given as a matter of course on the petition being admitted unless the Court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other error is so gross or apparent that no other conclusion is possible. In order, however, to test this fact even a short notice may be given to explore as to what the other side has to say and thereafter if the Court is

satisfied that there is strong prima facie case and the matter needs thorough examination, provisional admission may be given. We hope and trust that the High Courts would in future discontinue the practice of lightly granting provisional admission to the candidates at the time of regular admissions, as observed above...."

95. In the case of St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., the Supreme Court took judicial notice of the ill design of educational institutions taking advantage of obtaining interim order from the Courts, taking benefit of liberal or generous attitude of the Court in the name of student who are projected as sufferers to gain sympathy of the Court. The Supreme Court has observed that:-

"Before we part with this judgment, we consider it necessary to strike a note of caution in respect of passing of interim orders by Courts directing the students of unrecognised institutions, to appear at the examinations concerned. In view of the series of judgments of this Court, the Courts should not issue fiat to allow the students of unrecognised institutions to appear at the different examinations pending the disposal of the writ applications. Such interim orders affect the careers of several students and cause unnecessary embarrassment and harassment to the authorities, who have to comply with such directions to the Court. It is a matter of common knowledge that as a part of strategy, such writ applications for directions to recognise the institutions in question and in the meantime to allow the students to appear at the examinations are filed only when the dates for examinations are notified. Many of such institutions are not only "marked phantoms" but are established as business ventures for admitting sub-standard students, without any competitive tests, on the basis of considerations which cannot serve even the interest of the minority. There is no occasion for the Courts to be liberal or generous, while passing interim orders, when the main writ applications have been announced. In this process, students without knowing the design of the organisers of such institutions, become victim of manipulations."

96. In the case of P.C. Dental College, Bangalore Vs. The Dental Council of India, New Delhi and others, this Court has held that the cases of excess admissions stand at par with admission made with unrecognised institution and the law laid down by the Supreme Court will equally apply in both the situations. For taking the said view, support was drawn from a Division Bench judgment of this Court rendered in the case of MUNISHWARA SWAMY T.T. INSTITUTION v. STATE OF KARNATAKA, W.A.No. 668 of 1994 dated 25.9.1994

97. To sum up, it is held that:

I. Section 53.(10) of the State Universities Act and Section 4(1)(b) of the State Capitation Fee Act empowering the universities and/or the State Government to fix or increase the in take of the medical colleges, being repugnant to Sections 10A, 10B and 10C of the Central Act, are held as void and inoperative,

II. The power in relation to fixation and/or increase of the admission capacities of the medical colleges has to be governed strictly and exclusively under the provisions of Section 10A/10C of the Central Act.

III. No medical college can admit any student in excess of its admission capacity fixed by the Council subject to any increase thereof as approved by the Central Government under and in accordance with the provisions of Section 10A or Section 10C of the Central Act,

IV. The regulations framed on the aspects of medical education referred to in Sections 19A and 33 of the Central Act are mandatory in nature.

V. The Central or the State Government cannot exercise their executive powers under Article 73 or 162 of the Constitution of India in respect of any aspect of medical education for which provisions have been made under the Central or State legislation,

VI. Even the High Courts in exercise of their extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot direct, regularise or approve admissions in excess of the legally permissible admission capacities of the medical colleges on the ground of "judicial sympathy" towards the students.

Let a copy of this order may be made available to the learned Advocate General.