

(2014) 08 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 326 Of 2013 and CMA No. 434 Of 2013

Ashutosh Gupta and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Citation : (2014) 4 JKJ 352

Hon'ble Judges : Bansi Lal Bhat, J

Bench : Single Bench

Advocate : Aruna Thakur, Advocates for the Appellant; Neeru Goswami, Dy. A.G, Advocates for the Respondent

Judgement

Bansi Lal Bhat, J.—Petitioners are senior faculty members in different disciplines in Government Medical College, (GMC) Jammu. Through

the medium of instant petition they seek quashment of Government Order No. 43/HME of 2013 dated 17.01.2013 by virtue whereof private

practice of Heads of the departments (HODs) in GMC, Associated Hospitals and Dental Colleges of the State has been banned. Petitioner-1 is

Professor in the department of Radiation Oncology. Being the senior most faculty member in the aforesaid department, he has been given the

charge of HOD. Petitioner-2 is the senior most Professor in department of Cardio Thoracic Surgery and has been given the charge of HOD.

Petitioner-3 is Professor in the department of Surgery. Petitioner -4 is the senior most Professor in department of ENT and has been given the

charge of HOD. The case set up by the petitioners for quashment of impugned order is that their services are governed by the Jammu and Kashmir

Medical Education (Gazetted) Service Recruitment Rules, 1979 (hereinafter called

the rules), which classifies the posts into three categories viz.

teaching wing, administrative wing and general wing. The teaching wing includes Principals, Professors, Associate Professors, Assistant Professors,

Lecturers, Registrars and Demonstrators. However, no post of "HOD" is envisaged under these rules. Over the years, it has become a precedent

to give charge of HOD to the senior most faculty member irrespective of his designation. No additional benefits are available to senior most faculty

member assuming the charge of HOD. The duties discharged by the senior most faculty member as HOD includes fixation of roster for a fixed

period wherein he appoints the senior most members of his faculty including himself as heads of various units. This besides the teaching job

assigned to him. The service conditions of petitioners are governed by the 1971 rules. Other legal provisions relating to their conduct are Jammu

and Kashmir Public Men and Public Servants (Declaration of Assets and other Provisions) Act 1987, Section 13 whereof places restrictions on

practicing of any profession, carrying on any trade or business or undertaking any other employment without previous permission in writing of the

prescribed authority irrespective of the fact whether such public servant is on leave or in active service. Section 15 of the aforesaid Act renders

contravention of Section 13 punishable under Section 168 of RPC. Rule 10 of Government Employees Conduct Rules also places restrictions on

public servants in engaging in any trade or business or undertaking any other employment. Having regard for the deficient health services,

Government issued SRO 42 dated 23.01.1987 by virtue whereof the Jammu and Kashmir Doctors (Relaxation of Private Practice) Rules, 1987

were framed to relax the prohibitory clauses contained in the aforesaid Act of 1983. These rules were framed keeping in view the suggestions

made by committee of Experts constituted by the Government pursuant to the Judgment passed by the Jammu and Kashmir High Court in case of

Doctor S.N. Dhar decided on 17.10.1986.

In terms of SRO 42 dated 23.01.1987 permission was granted for private practice to the members of Jammu and Kashmir Medical Education

(Gazetted) Service subject to certain restrictions contained therein. Thus, the private practice continued till 1995 when Government came up with

SRO 196 dated 04.08.1995 rescinding SRO 42 with immediate effect. In 1998,

Government came up with SRO 132 dated 23.04.1998 in terms whereof members of Medical Education (Gazetted) Service were granted permission for private practice. This was to remove hardship faced by the general public in consequence of issuance of SRO 196. This practice continued till passing of impugned Government order dated 17.01.2012

in terms whereof it was ordered that HOD's in GMC, Associate Hospitals and Government Dental Colleges of the State shall not indulge in private practice. The impugned order is assailed on the following grounds:--

a) That SRO 132 of 1998 dated 23.01.1998 was still in existence and had not been rescinded or withdrawn when the Executive order in the shape of impugned Government order was passed to overreach SRO 132;

b) That the Government has the power to specify the posts from time to time upon which a prohibition regarding private practice could be imposed

in terms of SRO 132 of 1998 but such posts must be reflected in the cadre of posts under the 1979 rules. Since HOD is not a post envisaged

under the rules and is only a status given to a senior most faculty member in the department, it does not fall within the ambit of inherent powers of

Government by statutory order of 1998.

c) The classification of Doctors as against HOD framed by the Government order impugned is irrational and arbitrary and bears no nexus with the

object that it seeks to achieve;

d) That the impugned order was passed within two days after the change of Ministry without there being any material available to overlook the

recommendation of committee leading to passing of SRO 132;

e) That the senior faculty member given the status of HOD was not under any obligation to work beyond the office hours and in view of the same

the impugned order preventing him from being available to the public could not be justified even when his other equally senior and experienced

colleagues were being permitted to be available to the public.

2. Petitioners accordingly seek quashment of impugned order as being discriminatory and violative of Article 14 of Constitution of India.

3. Respondents contested the petition on the ground that no right of petitioners much less a fundamental right has been violated. It is pleaded that

petitioners cannot be allowed private practice in contravention of the Rules and

Regulations. It is contended that the decision contained in impugned order dated 17.01.2013 being a policy decision of the Government, the writ petition is not maintainable. According to respondents, the State has the power to ban private practice as well. Whether private practice should be allowed to Government Doctors or not, is a policy matter and such decisions are the prerogative of Government. Admitting the rule position stated by the petitioners in their petition, the respondents have pleaded that prohibition of private practice of HOD's in GMC and Government Dental Colleges has been imposed in the interest of patient care.

The impugned order is said have been issued in public interest. It is pleaded that the MCI is a regulatory body governing the internal functioning of all Medical Colleges/Institutions throughout the country. It is further pleaded that as per the regulations of Medical Council of India (MCI) each department shall have a HOD of the rank of full time Professor who shall have overall control of the department and the staffing pattern of the department shall be organized on the basis of units. HOD's have been provided space for their respective offices in their departments to discharge their duties. Each HOD controls the attendance of subordinate staff including the faculty, Registrar and Technical staff. They have been vested with the powers of disciplinary authorities. They also prepare the duty roster. Under MCI Regulations, the college council is the highest decision making body regarding internal functions of Medical College which comprises of the HOD's as its members while the Principal/Dean is the Chairperson.

The College Council draws up the curriculum and training programme, and deals with the enforcement of discipline and other academic matters.

The College council also organizes inter- departmental meetings. It is pleaded that some of the HOD's had created sub units to reduce their emergency to OPD days in a week to enhance non-emergency days in a week which was seriously viewed by the Government which issued Government order No. 51/HME of 2013 dated 02.01.2013 by virtue whereof all these sub units, being run in disregard of MCI norms, were disbanded. This was an attempt on the part of Government to improve the patient care in hospitals by increasing OPD per week. Thus, HOD's would not get a chance to indulge in private practice throughout the week. It is further pleaded that the impugned order was issued after it was

observed that the faculty members of GMC/Dental Colleges were badly involved in private practice resulting in deterioration of functioning of these

Colleges. Protest demonstrations were held against the infant deaths in G.B. Pant Child Hospital, Srinagar. The Estimate Committee of State

Legislative Assembly had recommended for imposing a ban on the private practice of Doctors in all the teaching hospitals on the ground that the

academic character of these institutions gets damaged besides affecting the profession of health care.

It is further pleaded that the Government is competent to ban private practice of any category of Doctors in the interest of patient care as per

Clause V of Rule 4 of SRO 132 dated 23.04.1998. It is pleaded that the Government is contemplating to ban further categories of Doctors to

indulge in private practice so as to improve functioning of hospitals and patient care. The respondents further pleaded that no posts of HOD's exist

in Rules of 1979. As per MCI Regulations, senior most members of the rank of full time professors are designated as HOD's to exercise overall

control on the department. HOD is supposed to be available any time in hospital whenever his services are required in the interest of patient care

and he cannot be allowed to shirk his responsibility on the pretext that some other senior colleagues not having the status of HOD have been

allowed to do private practice. According to respondents, the Government is seriously considering to ban private practice of all faculty members of

the Government/Dental Colleges of the State. It is pleaded that the petitioners designated as HOD's as per MCI norms cannot be permitted to

indulge in private practice while drawing non-practicing allowance, besides enjoying the status as departmental head.

4. Respondent-2 has filed an affidavit in terms of order dated 08.04.2013 to indicate whether any survey has been conducted about the health

care position in the State and availability of immediate medical care to the citizens of the State before issuing of impugned order. Respondent -2

has deposed in the affidavit that in Jammu district 364 registered nursing homes/Clinical Establishment in private sector are functioning in addition to

278 Health Institutes in Government Sector. In Srinagar District 412 Nursing Homes/Clinical Establishments in private sector are functioning in

addition to 74 health institutions in Government Sector. This is in addition to ASCOMS Hospital Sidhra and Sahora Dental College in Jammu

District, SKIMS Soura and Jhelum Valley Medical College Bemina functioning in Srinagar District. Many Allopathic Institutions and Ayurvedic

Hospitals are functioning in both capital cities. The Estimates Committee of State Legislative Assembly and Legislative Council have recommended

imposition of ban on private practice of Doctors serving in all the Teaching Hospitals. It is further deposed that evening clinics have been started in

Colonel Chopra Nursing Home and in Jammu and Kashmir Nursing Home, Gupkar Road Srinagar to ensure services of trained

Doctors/specialists during odd hours to cater to the needs of patients.

5. Learned counsel for petitioners submitted that the services of the petitioners are governed by Jammu and Kashmir Medical Education

(Gazetted) service recruitment Rules 1979, which categorizes the designation of posts into three categories namely Teaching Wing, Administrative

Wing and General Wing. Teaching Wing includes Principals, Professors, Associated Professors, Assistant Professors, Lecturers, Registrars and

demonstrators. It is submitted that there is no post like ""Head of Department"" (HOD) envisaged in these rules. Over the years, a practice has

evolved to give charge of HOD to the senior most faculty member irrespective of his status in the faculty. The HoD is not entitled to any additional

benefits. The duties entrusted to him include fixation of roster for a particular period and appointing heads of various units from amongst the faculty

members including himself. Such units are created in every department and their functioning is regulated by Medical Council of India (MCI). Such

units run OPDs, Operation theatres, Emergency services on pre-determined days in a week. Apart from 1979 Rules, services of petitioners are

governed by Jammu and Kashmir Public Men and Public Servants (declaration of Assets and other Provisions) Act 1983. Section 13 of the

aforesaid Act imposes restrictions on public servants to practice any profession for carrying on any trade, or business or undertake any other

employment without previous permission of the prescribed authority. Section 15 of the said Act provides for penalty for contravention of section

13 and renders public servants liable for punishment. Rule 10 of Government Employees Conduct Rules also places restrictions upon the

Government Employees to engage in a trade or business or undertake any employment except with the previous permission of the Government.

Thus, the rules governing the service conditions of petitioners do not permit them to go for private practice. However, in view of geographical location, disturbed conditions, poor road connectivity and lack of infrastructure in remote and hilly areas for providing medicare, the Government relaxed prohibitory clauses and framed the Jammu and Kashmir Doctors (Relaxation of Restrictions on Private Practice) Rules 1987 vide SRO 42 dated 23.01.1987. These rules were framed keeping in view the suggestions made by the Committee of the Doctors constituted by the Government pursuant to judgment passed by this Court in case of Dr. S.N. Dhar. Thus, permission was granted for private practice to Government Doctors subject to certain restrictions. Subsequently, Jammu and Kashmir Government Doctors (Relaxation of Restrictions on Private Practice) Rules 1987 were rescinded in terms of SRO 197 of 1995. However, permission was granted for private practice by Government Doctors yet again in terms of SRO 132 dated 23.04.1998. This was done in view of difficulties which the general public had to face on account of rescinding of 1987 Rules. However, in terms of Government Order No. 43-HME of 2013 dated 17.01.2013, right of HOD's in Government Medical Colleges, associate hospitals and Government Dental Colleges of the State to do private practice has been taken away. Learned counsel for petitioners submitted that the impugned order taking away the rights of HoD's to indulge in private practice was bad in law as the same could not overreach the Statutory Order of 1998. It is further submitted that though in terms of SRO 132 of 1998, the Government was empowered to specify the posts from time to time upon which prohibition regarding private practice could be imposed, yet such powers could not be exercised in regard to a post not reflected in the cadre of posts under 1979 Rules. It is submitted that 'HOD's' do not come within the purview of ""any other post"" as envisaged under 1998 Notification. The impugned order is further assailed as being arbitrary, irrational and violative of rights guaranteed to petitioners under Article 14 of the Constitution of India. It is submitted that the classification of Doctors as HOD's by the Government in terms of order impugned is totally irrational and arbitrary and has not reasonable nexus with the object that it seeks to achieve. Thus imposing of restrictions on private practice by members of teaching faculty working as HOD's, is

discriminatory.

6. Learned counsel for respondents submitted that in terms of section 13 of aforesaid Act of 1983 the Government Doctors are not entitled to

indulge in private practice in violation of statutory provisions which visits the offender with penal consequences. It is further submitted that the

Employees Conduct Rules also prohibit the Government Doctors from indulging in private practice. Rule 15 of the Jammu and Kashmir Medical

Education (Gazetted) Service Rules laying down the conditions of service also places restrictions on private practice of Government Doctors. Such

restrictions are said to be incidental to employment. It is further submitted that prohibition on private practice of HoDs, in terms of norms fixed by

MCI, promotes public interest and the Government is within its right to withdraw relaxation on the ban on private practice.

7. Heard and considered.

8. It is not in controversy that the petitioners are Doctors by profession enjoying positions as Professors and holding charge of Heads of various

Departments in their capacity as Senior most faculty members of their respective Departments in the Government Medical Colleges, Associated

Hospitals and Government Dental Colleges of the state. Petitioner No. 4, Doctor Sunil Kotwal appears to have filed writ petition SWP No.

2660/2012 titled Dr. Sunil Kotwal v. State of J&K and Ors previously wherein he prayed that the official respondents be directed to appoint the

petitioner to the post of HoD of ENT. The above petition appears to have been withdrawn after petitioner No. 4 was given the charge of HoD of

ENT. It is not in controversy that the services of petitioners as Government Doctors are governed by the Jammu and Kashmir Medical Education

(Gazzeted) Service Rules 1979, Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and other provisions) Act 1987 and

Government Employees Conduct Rules, in terms whereof they are not entitled to indulge in private practice without the previous sanction of the

Government. In terms of Government Order No. 340-HME of 1986 dated 31.05.1986, private practice of all the Government doctors in the field

of Allopathic including Dental Surgeons was banned w.e.f. 01.06.1986 rescinding SRO 156 dated 23.04.1984 and all other SROs issued on the

subject earlier. No allowance and special incentive was ordered to be paid. This

order was challenged before this Court in SWP No. 688/1986

titled Dr. S.N. Dhar and Ors v. State and J&K and Ors : JKJ Soft JKJ/23976 which came to be dismissed in terms of judgment dated

17.10.1986 with some suggestions to the State Government. The relevant Paragraph of the aforesaid judgment is reproduced as under:--

...In the light of the aforesaid discussion, the conclusion becomes irresistible that the impugned order declaring the resolve of the government

strictly enforce the ban on the government doctors to undertake private practice does not violate the rights of the doctors. In the service of the

government as guaranteed by Article 19(1)(g) of the constitution and the restrictions imposed by the impugned order, being in the public interest,

are reasonable restrictions, saved by Article 19(6) and have a definite nexus with the object of achieving efficiencies in hospitals, better patient

care, improvement in the standard of medical education etc. The impugned order, therefore, is constitutionally valid and is accordingly upheld.

9. The court, however, made some suggestions to the State Government to mitigate the hardship of citizens which were likely to arise by banning

private practice. It was observed that section 13 of 1983 Act does not confer any right on the Government Doctors to indulge in private practice

but the section does empower the State Government to relax the rigor of the ban in order to meet the exigency of the situation by according

necessary permission to Government doctors to undertake private practice. It was held that the impugned order does not violate the fundamental

rights of the Government doctors under Article 19(1)(g) of the constitution of India and in terms of the enforced ban on private practice is not an

unreasonable restriction and since it has a definite nexus with the object sought to be achieved and is in the interest of general public, it is saved by

Article 19(6) of the Constitution of India.

10. The Hon'ble Apex Court, while dealing with the issue of prohibition imposed on private practice of teaching doctors in West Bengal in case

titled Sukumar Mukherjee Ors. Vs. State of West Bengal and another, , held:--

...Private practice does interfere with the work of the teacher-doctors both in the classrooms as well as in the hospitals. There is, therefore, a need

to stop the same in the interests of both the improvement of the standards of the Medical Education as well as the betterment of the Health Care

Services in the teaching hospitals. The ban on private practice will make available to the teachers-doctors the time required for reading and

research which is absolutely essential for their main profession as teachers. For the members of West Bengal Health Services (W.B.H.S.) the time

for reading and research is not essential. Hence there is nothing unreasonable in prohibiting practice for the members of W.B.M.E.S.

11. The Hon'ble Apex Court further held that:--

Distinction between the members of W.B. Medical Education Service and those of W.B. Health Services was not discriminatory and thus, not violative of Article 14 of the Constitution of India.

12. In pursuance to the recommendations made by the Expert Committee constituted by the State Government in view of suggestions made by this

Court in S.N. Dhar's case, the State Government issued Jammu and Kashmir Government Doctors (Relaxation of Restrictions on Private Practice)

Rules 1987, by virtue whereof private practice by the Government Doctors was allowed with certain conditions. SRO 42 came to be challenged in

SWP No. 407/1992 titled Sukesh Chander Khajuria v. State of J&K and ors. A Division Bench of this Court dismissed the writ petition vide

judgment dated 14.02.1994. Later, the Government issued SRO 196 dated 04.08.1995 rescinding Jammu and Kashmir Government Doctors

(Relaxation of Restrictions on Private Practice) Rules 1987. Subsequently, the Jammu and Kashmir Government Doctors (Relaxation of

Restrictions on Private Practice) Rules 1998 came to be framed and SRO No. 132 dated 23.04.1998 was issued, by virtue whereof the

Government Doctors have been allowed to do private practice subject to certain restrictions. Thereafter, the impugned Order No. 43 HME of

2013 dated 17.01.2013 came to be issued by virtue whereof HoDs in Government Medical Colleges, Associated hospitals and Government

Dental Colleges of the State have been ordered not to indulge in private practice. The impugned order dated 17.01.2013 is reproduced as under:-

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Government of Jammu and Kashmir

Health and Medical Education Department,

Civil Secretariat, Jammu.

Subject:- Ban on Private Practice

Government Order No. 43-HME of 2013

Dated 17.01.2013

In the interest of administration and patient-care, it is hereby ordered that the Heads of the Departments in Govt. Medical Colleges & Associated

Hospitals and Govt. Dental Colleges of the State shall not indulge in Private Practice henceforth.

By order of the Government of Jammu and Kashmir

Sd/-

M.K. Dwivedi (IAS)

Commissioner/Secretary to Government

Health and Medical Education Department.

13. To understand the controversy raised in the instant petition, be it noticed that in terms of SRO 196 dated 04.08.1995, Jammu and Kashmir

Government Doctors (Relaxation of Restrictions on Private Practice) Rules 1987 were rescinded. Thus, the position that obtained prior to

promulgation of aforesaid rules was restored. The Government Doctors could not indulge in private practice any more. Restrictions on private

practice, however again came to be relaxed in terms of Jammu and Kashmir Government Doctors (Relaxation of Restrictions on Private Practice)

Rules 1998 issued vide SRO No. 132 dated 23.04.1998, relevant provisions whereof are reproduced as under:--

Restrictions "":

(a) No person who is a member of the service shall undertake private practice.

i/- during the office hours;

ii/- on the day of admission of patients in his unit or attending to emergencies;

iii/- if he is appointed to the teaching wing of the service on the non-clinical wing, like Pathology, Bio-Chemistry, Anatomy, Physiology,

Microbiology, Forensic Medicine, P & S Med. And Pharmacology and posted as Demonstrators, Registrars and on any other tenure posts

provided they possess MBBS/BDS or equivalent degree recognized by MCI.

iv/- if he is, or is appointed as, the Principal of an Medical College/in the State or Med. Supdt/Dy. Med. Supdt./Asstt. Med. Supdt of Medical

College Hospital and other Hospitals Associated with the Medical College, Jammu/ Srinagar.

v/- Any other post which may be specified by the Govt. from time to time.

(b) a Govt. doctor shall not undertake private practice

i/- during office hours;

ii/- if he is, or is appointed as.

(a) Director Health Service;

(b) Dy. Directors/Asstt. Directors;

(c) Chief Medical Officers/Dy. CMOs and BMOs/DTOs-D.I. Os;

(d) Med. Supdt. Of a Govt. Hospitals; or

(e) If he is selected for any PG course;

(f) Any other post which may specified by the Govt. from time to time.

14. A cursory look at the aforesaid rules lays bare that in view of the hardships faced by the general public on account of rescinding of

Government Doctors (Relaxation of Restrictions on Private Practice) Rules 1987, the Government decided to allow private practice by members

of Jammu and Kashmir Medical Education (Gazetted) Service and by Government Doctors subject to certain restrictions embodied in Rule-4 of

Jammu and Kashmir Government Doctors (Relaxation of Restrictions on Private Practice) Rules 1988 notified vide SRO 132 dated 23.04.1998.

Such restrictions apply to a member of Medical Education (Gazetted) Service to undertake private practice during working hours on the day of

admission of patients in his unit or while attending to emergency, if he was appointed to the teaching wing of the service in non-clinical wing

specified in the Rules and posted as demonstrator, Registrar or on any other tenure post provided he possessed MBBS/BDS or equivalent degree

recognized by Medical Council of India. The restrictions also apply to a member of Medical Education (Gazetted) Service, if he was appointed as

Principal of Medical Colleges/Dental College or Medical Superintendent/Dy. Medical Superintendent/Asstt. Medical Superintendent of Medical

College, Hospital or an Associated Hospital. Sub Rule-V of Rule-4 lays down that the Government may extend such restrictions to any other post

specified by it from time to time. It is therefore, manifestly clear that apart from posts specified in Rule-4, the Government has reserved to itself the

power to include any other post borne on the cadre of J&K Medical Education (Gazetted) Service to which the restrictions on undertaking private

practice can be extended in public interest. In the instant case, it is not disputed that the petitioners are borne on the strength of J&K Medical

Education (Gazetted) Service and their service conditions are regulated by J&K Medical Education (Gazetted) Service Recruitment Rules 1997. It

is also not disputed that the petitioners belong to the teaching wing of the service and being the senior most members of their respective faculties,

they have been given the charge of HoD's of the respective units. However, the petitioners are not working in the capacities enumerated in Rule -

4(a)(iii) of 1988 Rules to which embargo on undertaking private practice extends. The sole question for determination, therefore, is whether the

impugned order, extending embargo to petitioners in their capacity as HoD's in all Government Medical Colleges, Associated Hospitals and

Government Dental Colleges, is liable to be quashed for being illegal, arbitrary and discriminatory.

15. It is settled position of law that ban on Government Doctors to undertake private practice does not violate the rights of the Doctors in the

service of Government as guaranteed by Article 19(1)(g) of Constitution of India. The restrictions on private practice can be imposed on members

of teaching faculty holding different capacities in various disciplines in the public interest. Such restrictions having nexus with the object of attaining

and maintaining the level of efficiency in Hospitals, enhancing patient care and improving the standard of Medical Education constitute reasonable

restrictions as falling within the purview of Article 19(6) of the Constitution of India. The impugned order imposing ban on private practice on

members of Medical Education (Gazetted) Service holding charge of HoDs is in consonance with the MCI Regulations seeking ban on private

practice of doctors in all Medical Institutions. Being conscious of the difficulties faced by general public on account of lack of infrastructure in rural

areas having poor connectivity and inadequate medicare facilities, the State Government has relaxed ban on private practice by the Government

Doctors working in Health Care Institutions located in peripheries and rural areas. However private practice by doctors belonging to Medical

Education (Gazetted) Service and those working in teaching faculties of Government Medical and Dental Colleges does not conform to MCI

Regulations dealing with the standards of Medical Education. Laying down of maximum standards of Medical Education imparted in Medical

Institutions is a subject falling within the purview of "central list" engrafted in Schedule 7 of the Constitution of India and the same falls within the

province of Parliament to legislate upon. The Regulations of MCI are mandatory in character and members of Medical Education (gazetted)

Service are subject to the regulatory mechanism of MCI.

16. The argument advanced on behalf of petitioners that HoD not being a post borne on the cadre of J&K Medical Education (Gazetted) Service,

the impugned order taking away the rights of HoD's to indulge in private practice was bad in law as the same could not overreach the Statutory

Order of 1998 is devoid of merit. The order referred does not vest any absolute and unqualified right in a member of the Medical Education

Service to indulge in private practice. It is futile to raise such fallacious argument on behalf of petitioners, one of whom namely Doctor Sunil Kotwal

filed SWP No. 2660/2012 seeking directions in the name of respondents to appoint him to the post of HOD of ENT Department. He was

subsequently given the charge of HOD of ENT Department. Power of State Government to extend restrictions under Rule 4(a)(v) to any other

post does not necessarily refer to a post borne on the cadre of J&K Medical Education (Gazetted) Service. It is indisputable that HOD's do exist

in all teaching Hospitals despite no post bearing the nomenclature as "HOD" under J&K Medical (Gazetted) Service Recruitment Rules 1979.

Under MCI Regulations, each department in Medical College is supposed to have a HOD of the rank of full time Professor to exercise overall

control on the department. The affairs of these departments are managed by HOD's who are required to be available round the clock, whether on

roster duty or on call duty. The larger social interests of patient care and of student community pursuing medical courses would not permit their

indulgence in private practice. The respondents have rightly referred to public outcry after the unfortunate death of scores of children in G.B. Pant

Children Hospital Srinagar in the year 2012 to demonstrate that it was imperative to impose restrictions on private practice of HoDs of

Government Medical Colleges, Associated Hospitals and Dental Colleges of the State.

17. The object sought to be achieved by issuance of impugned order being to ensure that the service of senior faculty members in Medical/Dental

Colleges and Associated Hospitals of the State are best utilized for patient care, it cannot be said that the restrictions imposed by the impugned

order do not have a definite nexus with the object of achieving efficiency in Hospitals, better patient care and improvement in the standard of

Medical Education. Viewed thus, the impugned order cannot be struck down as being illegal, arbitrary or discriminatory in nature. Its

Constitutional validity is accordingly upheld. There being no merit in the petition, the same is accordingly dismissed alongwith connected CMA(s).