

(2025) 06 KL CK 0896

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.1365, 2637, 29353 Of 2019, 27168, 41738 Of 2023, 2870 Of 2024

Kerala Private Hospitals Association Having Its Registered
Office At Kpha Head Quarters

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 23-06-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 47, 246, 246(3), 249, 250, 252, 252(1), 252(2)
Kerala Clinical Establishments (Registration and Regulation) Act, 2018 — Section 2(c), 2(h), 2(j), 3, 3(2)(j)(i), 4, 4(1)(g), 8, 16(2), 25, 26, 34, 35, 39(2), 39(3), 47, 52, 14(3)(a), 14(3)(c)

Citation : (2025) 06 KL CK 0896

Hon'ble Judges : Harisankar V. Menon, J

Bench : Single Bench

Advocate : Kurian George Kannanthanam, K.Anand, Tony George Kannanthanam, A.Abdul Rahman, Aneesh James, S.Kannan

Final Decision : Dismissed

Judgement

Harisankar V. Menon, J

1. It is often said that health is a human right and, therefore, a prerequisite in the overall development of a nation, which is achieved through the intervention of human beings. Health is described as a state of complete physical, mental, and social well-being of an individual. The Constitution of India under Article 21 mandates the protection of "life" and personal liberty of the citizen. The Directive Principles of State Policy - under Article 47- also lays down that it is the duty of the State to improve "Public Health". The challenge in these writ petitions is to be considered in the backdrop of the afore-mentioned broad principles.

2. These writ petitions have been filed seeking to challenge various provisions of the Kerala Clinical Establishments (Registration and Regulation) Act, 2018 (hereinafter referred to as "Act") and the Rules made thereunder (hereinafter

referred to as "Rules") as unconstitutional and arbitrary on various counts.

3. A reading of the preamble to the Act in question shows that the same is enacted for prescribing standards of facilities in services which may be provided by the clinical establishments for improvement of the "public health". The term "clinical establishment" has been defined under Section 2(c) of the Act to cover a hospital, maternity home, nursing home, clinic, sanatorium, or any institution that offers services, facilities with or without beds requiring treatment, diagnosis, or care for illness, injury, etc. The Act under Chapter IV provides for registration and standards for clinical establishments. The Act also provides for the cancellation of registration in certain circumstances. Chapter V provides for penalties for contravention of the provisions of the Act, non-registration, etc. Chapter VII provides for appeals, revision, etc., against various proceedings issued under the Act. Chapter VIII lays down the provisions with reference to the inspection of the clinical establishments. Chapter IX lays down miscellaneous provisions like the display of the certificate of registration of the medical establishment, maintenance of medical records, etc. Section 52 of the Act provides for the rule-making power, under which the Rules have been framed.

4. W.P(C) No.1365 of 2019 is filed by the Kerala Private Hospital Association and others seeking to challenge Sections 16(2) and 39(2) and (3) of the Act as arbitrary and violative of Part III of the Constitution. They have also sought for a declaration that they are not liable to furnish the data required under the Act and Rules. W.P(C) No.29353 of 2019 is filed by the Indian Medical Association, Kerala State branch, as well as the Hospital Board of India, seeking to challenge various provisions of the Act and Rules as unconstitutional and unenforceable and ultra vires to the Act, respectively. W.P(C) No.27168 of 2023 is filed by the Indian Dental Association seeking almost similar reliefs. W.P(C) No.41738 of 2023 is filed by a few dentists seeking the same relief. They have also sought for a declaration that the inclusion of "dentistry" under Section 2(j) of the Act is unconstitutional and violative of Article 14 of the Constitution of India. W.P.(C) No.2637 of 2019 is filed by the Kerala Private Clinics Association and another seeking the same reliefs. W.P(C) No.2870 of 2024 is filed by the Medical Laboratory Owners Association seeking to challenge the provisions of the Act and Rules referred to above.

5. I have heard Sri.Kurian George Kannanthanam, Sri.George Poonthottam, Sri.K.I. Mayankutty Mather, the learned senior counsel, Sri.R.Surendran and Sri.K.M.Sathyanatha Menon, the learned counsel for the petitioners as well as Sri. Manoj Kumar, the State Attorney, on behalf of the respondent State. I have also heard Sri.Ajit Joy for the intervenors in W.P(C) No.1365 of 2019.

6. Sri.Kannanthanam, the learned senior counsel for the petitioner in W.P(C) No.1365 of 2019 would contend that: -

i. Though Section 39(2) of the Act provides for display of "fee rate" and "package rate" for the service/facility available, what is meant by "fee rate" and "package

rate” has not been defined. Therefore, according to him, this leads to a situation where the enforcing Authorities can proceed against the petitioners at their whims and fancies.

ii. To obtain registration under the Act, various details have to be provided, as insisted under Form 2A, which goes against the provisions of Section 4 of the Act, since the notification required under Section 4(1)(g) has not been issued.

iii. Section 47 of the Act, which requires the extension of treatment during emergencies, leads to impossibilities, at least with respect to rural areas.

iv. With respect to Section 26 of the Act - prescribing imposition of penalties - he would submit that, what leads to contravention of the Act has not been provided for.

7. Sri.Mather, the learned senior counsel for the Indian Medical Association, would contend that: -

i. The validity of the enactment challenged in the writ petition is not pressed.

ii. Section 14(3)(a) and (c) provides unbridled powers to the Authority under the statute to suspend/cancel the clinical establishments when there is “imminent danger to public health”, without defining what is “imminent danger.”

iii. He contends that the provisions can be used by the Authorities at their whims and fancies. For instance, he points out that in a hospital with various specialities/ departments, a minor negligence in one speciality would lead to suspension/ cancellation of the registration of the entire hospital.

iv. The statute provides for immediate closure on suspension/cancellation as above, forcing the patients who have already been admitted in the hospital to move out immediately/ within a short notice.

v. Section 47(1) providing for “safe transport of the patient” leads to practical difficulties.

vi. Section 39, which provides for the display of certificates, etc., including the “fee rate and package rate,” leads to uncertainties.

vii. Rule 24(7)(3) of the Rules invades the “privacy” of a patient.

8. Sri.Poonthottam, the learned senior counsel representing the Indian Dental Association, would contend that:-

i. Under Section 3 of the Act, with respect to the establishment of a State Council, one representative from “welfare organisation of the patients in the State” is seen included and insofar as the State Council is in the form of an expert body, the afore inclusion is patently illegal. He would also point out the constitution of the “Executive Committee” under Section 8, wherein the representative of the welfare organisation of the patients to be nominated by the Government is also included and would contend that arbitrariness is writ large as

seen from the inclusion of the afore representative/s.

ii. He would rely on Section 14(3)(a) and (c) of the Act to contend that unguided power had been bestowed on authorities to suspend/ cancel the registration.

iii. He would invite the attention to the definition of the term clinical establishments under Section 2(c)(i) to show the non-application of mind while framing the statute, insofar as "medical colleges" are not covered.

iv. He would rely on Section 16(6) of the Act to point out that though several registrations are visualized for each category of a clinical establishment, with reference to the cancellation under the statute, individual cancellation of the category of the medical establishment is not provided for.

v. He would contend that the provisions of Section 19(11), by which results of inspection are being made available to the public, would lead to unforeseen results.

vi. The provisions of Section 19(14) permitting cancellation of the registration on non-acquisition of prescribed standards, without affording an opportunity for correction, would lead to bureaucratic abuse.

vii. Section 25(1)(b) is also referred, to contend that excessive powers are conferred on Authority to cancel the registration.

viii. Section 27(3) visualises evidence from a third party –a complete stranger– and therefore the enquiry thereunder is not to be permitted.

ix. Sections 37 and 38 provide for inspection/search of clinical establishments leading to violation of the privacy of employees and patients.

x. He would contend that "fee rate" and "package rate" having not been defined, Section 39 of the Act becomes unworkable.

xi. He would contend that provisions of Section 42 extending protection against action taken in good faith to the Authority or the Council are to be made applicable to the clinical establishments also.

xii. Section 47 has been enacted, making it mandatory for every clinical establishment to provide treatments in case of emergency, without considering the ground realities.

xiii. He has made a comparison to the provisions of similar enactments in Tamil Nadu to show that the impugned Act and the Rules are only to be declared unconstitutional.

9. Sri.Surendran, the learned counsel for the individual Dentists who are the petitioners in W.P(C) No.41738 of 2023, would contend that:-

i. As the Union passed Central Act 23 of 2010, which was enacted at the request of a few States, the State of Kerala, being not one among them, is not entitled to

enact the Act in question.

ii. He would rely on Section 2(c) of the Central Act to contend that “dentistry” is not covered, whereas, under the Kerala Act, dentistry is specifically seen covered under Section 2(c) read with 2(j).

iii. Dentists are independently covered under the Dentists Act, 1948, under the supervision of the Dental Council of India.

10. Per contra, Sri. Manoj Kumar, the learned State Attorney on behalf of the State, would contend that: -

i. The primary objective of the Act is to safeguard public health and patient safety. Therefore, it affects the community at large by empowering patients to make informed choices about hospitals and clinical establishments. The Act intends to promote ethical standards in clinical practice by introducing a regulatory framework that provides for transparency.

ii. The Apex Court has repeatedly held that there is a presumption in favour of constitutionality. A statute cannot be held unconstitutional merely because it is arbitrary. Even assuming it is so, the Courts do not examine the wisdom of the legislature, it is only the violation of the constitutional provision/s that is to be looked into.

iii. When private interest is pitted against public interest, particularly in the field of public health, the larger public interest is the one that should be considered.

iv. The mere “possibility” of abuse/misuse of a statutory provision is not to be a guiding factor in considering the constitutionality of a statute.

v. The writ petitions have been presented without establishing a cause of action.

vi. With reference to the requirement for displaying the rate, reference is made to the order dated 27.02.2024 of the Apex Court in Writ Petition (Civil) No.648 of 2020, to point out that even the Apex Court directed to convene a meeting of the stake holders and to come up with a concrete proposal.

vii. There is no violation of privacy as contended with reference to the requirement to provide the details of doctors and such other nursing staff, as many of the established hospitals have provided such information on their respective websites. With reference to statistics, it has been pointed out that the majority of the hospitals have obtained registration under the Act in question.

viii. The cancellation of registration, etc., are after following due process of law.

11. Sri. Ajit Joy, on behalf of the intervenors, would point out that:-

i. The writ petitions are only to be rejected insofar as the Act and the Rules impugned in the writ petitions only seek to provide for transparency.

ii. With examples, he would contend that various hospitals have already

published the amounts being charged by them for various treatments provided by them.

iii. In view of the judgment of the Division Bench of this Court in W.P(C) No.10659 of 2021, he contends that the writ petitions are only to be rejected.

12. Thus, on a consideration of the rival contentions in these writ petitions noticed as above, the following questions arise for consideration.

i. Can the State of Kerala enact the legislation in question, on the face of the Central Act, 23 of 2010?

ii. Are the impugned Act and the Rules made thereunder, unconstitutional?

iii. Are the provisions of the Act requiring the display of "fee rate" and "package rate", without defining the "fee rate" and "package rate", unenforceable?

iv. Does the provision entitling the suspension/cancellation provide for unbridled powers on the statutory Authority?

v. Is there any arbitrariness with respect to Section 3 of the Act as contended?

vi. Is the inclusion of "dentistry" in the impugned Kerala statute, constitutional?

13. The first issue arising for consideration is with reference to the contention raised by Sri. Surendran, counsel of the petitioners in W.P(C) No.41738 of 2023, that insofar as the Parliament has passed the Central Act, 23 of 2010, the State of Kerala is not entitled to enact the statute in question. He makes the above submission with reference to the provisions of Article 252 of the Constitution of India. According to him, by virtue of the enactment of the Central Act under Article 252(1), the Central Act is capable of being adopted by other States like the State of Kerala, which have not sponsored a resolution under Article 252(1).

14. It is under Article 246(3) that the State Legislature is empowered to enact laws, with specific reference to the matters enumerated in List II in the Seventh Schedule of the Constitution. It is not in dispute that Entry 6 to List II of the Seventh Schedule covers "Public health and sanitation; hospitals and dispensaries" and that it is with reference to the afore Entry, the State has enacted the legislation in question. Under certain circumstances, even the Parliament is entitled to legislate with respect to the matters in the State List- in the national interest under Article 249 and in the event of the proclamation of an emergency under Article 250. Similarly, Article 252 of the Constitution provides as under:-

"252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the

Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.”

Under Article 252(1), two or more States can, by resolution, empower the Parliament to make laws with respect to matters for which the Parliament has no power to legislate. The Central Act in question has been passed on the basis of resolutions of as many as four States. Article 252(2) further provides that any legislation so passed by the Parliament “may be adopted” by another State. Thus, it is the choice of the State which has not passed a resolution under Article 252(1) to adopt a legislation made under Article 252(1). The Constitution nowhere provides that in the event of the Parliament legislating on a particular aspect falling under the State List on the basis of resolutions passed by the Legislatures of some of the States, the remaining States are bound to adopt the said legislation or are not empowered to legislate under Article 246 independently. A reading of the Central Act would also make this position clear, where under Section 1(2), the requirement for adoption by the non-sponsoring States have been clearly laid down.

15. The learned counsel, Sri.Surendran also relied on the judgment of the Apex Court in *Union of India v. Valluri Basavaiah Chowdhary and Others* [(1979) 3 SCC 324] in support of his submission. However, the afore judgment is not a proposition for the submission made by the learned counsel as above. In the afore case, the Act in question has been passed by the Parliament on the basis of the resolution passed by the Legislatures of 11 States, not including the State of Rajasthan. However, in Schedule I to the Act, all the States were listed out, irrespective of whether they have passed a resolution under Article 252(1) or not. The legislation was with respect to an item under Entry 18 of List II of the Seventh Schedule. A contention was raised before the Apex Court that though the State of Rajasthan has subsequently passed a resolution adopting the Act in question, insofar as the State Legislature of Rajasthan never authorised the Parliament to enact a law originally, that could not be adopted by a later resolution passed by the State Legislature of Rajasthan. It is this contention that was considered by the Apex Court, holding that as regards the State of Rajasthan or such other State which have not sponsored a resolution under Article 252(1), the Act in question would “lay dormant” till such time the Act stood adopted by the State Legislature of Rajasthan. Therefore, in my opinion, the afore decision is not one supporting the case set up by Sri. Surendran.

16. The second issue arising for consideration is as to whether the impugned Act

and Rules are unconstitutional. As already noticed, the gravamen of the contentions raised is with reference to the unguided powers vested on the statutory authorities, arbitrarily.

17. The Apex Court in *State of A.P. and Others v. McDowell & Co. and Others* [(1996) 3 SCC 709] had occasion to consider as to the grounds on which a law made by the Parliament/Legislature can be struck down, holding as under: -

"43. Shri Rohinton Nariman submitted that inasmuch as a large number of persons falling within the exempted categories are allowed to consume intoxicating liquors in the State of Andhra Pradesh, the total prohibition of manufacture and production of these liquors is "arbitrary" and the amending Act is liable to be struck down on this ground alone. Support for this proposition is sought from a judgment of this Court in *State of T.N. v. Ananthi Ammal*. Before, however, we refer to the holding in the said decision, it would be appropriate to remind ourselves of certain basic propositions in this behalf. In the United Kingdom, the Parliament is supreme. There are no limitations upon the power of the Parliament. No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness - concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the Legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found

before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom.”

(Underlining supplied)

Thus, it is settled principle of law that this Court can strike down an enactment only on the grounds of lack of legislative competence, violation of fundamental rights or any of the constitutional provisions. It has been emphatically laid down by the Apex Court that “there is no third ground” for striking down a law enacted by the Legislature. As already found, there is no legislative incompetence - with respect to the provisions of Entry 6 to List II of the Seventh Schedule or the provisions of Article 252. The petitioners have not pointed out any violation of the Constitutional provisions or violation of fundamental rights in support of the above contention.

18. True, the petitioners have contended that the Legislation in question provides for unbridled and arbitrary powers on the statutory authorities. In this connection, apart from the submission made to that effect, none of the petitioners has relied on any actual unreasonable actions/steps taken against them. Apart from this, as held by the Apex Court again in *Rajbala and Others v. State of Haryana and Others* [(2016) 2 SCC 445], an enactment cannot be struck down merely on account of the alleged unreasonableness/ arbitrariness.

19. This Court also notices that under Article 47 of the Constitution of India, it is the duty of the State to raise the standard of living and to improve public health. In *State of Punjab and Others v. Mohinder Singh Chawla* [(1997) 2 SCC 83] it has been categorically found by the Apex Court that “Right to health is integral to right to life” and that “Government has constitutional obligation to provide health facilities”.

20. The Apex Court in *State of Punjab v. Shiv Ram and Others* [(2005) 7 SCC 1] has found as under: -

“39. In recent times the self regulatory standards in the profession have shown a decline and this can be attributed to the overwhelming impact of commercialisation of the sector. There are reports against doctors of exploitative medical practices, misuse of diagnostic procedures, brokering deals for sale of human organs, etc. It cannot be denied that black sheep have entered the profession and that the profession has been unable to isolate them effectively. The need for external regulation to supplement professional self regulation is constantly growing. The high costs and investments involved in the delivery of medical care have made it an entrepreneurial activity wherein the professionals look to reaping maximum returns on such investment. Medical practice has always had a place of honour in society; currently the balance between service and business is shifting disturbingly towards business and this calls for improved

and effective regulation, whether internal or external. There is need for introspection by doctors - individually and collectively. They must rise to the occasion and enforce discipline and high standards in the profession by assuming an active role.”

(Underlining supplied)

The findings by the Apex Court in the afore paragraph, in my opinion, strikes at the root of the contentions raised by the petitioners in these writ petitions. This Court also notices that challenge against the vires of similar enactments made by some other States have also been turned down by the respective High Courts as Under:

i. Dr. Ramneek Singh Bedi and another v. Union of India and Others [2011 Supreme (P&H) 1462].

ii. Dr. Yashbir Singh Tomar and Others. v. State of Uttarakhand and Others [2017 Supreme (UK) 302].

iii. Madhukar Dwivedi v. State of Chhattisgarh and Others [2018 KHC 2483].

iv. Md. Rezaul Karim and Others v. State of West Bengal and Others [2018 KHC 2011].

v. D. Dharmabalan v. Secretary of Health and Family Welfare, Government of Tamil Nadu, Chennai and Others [(2019) SCC OnLine Mad 39250].

I am of the opinion that the challenge against the constitutionality of the Act in question is, therefore, only to be rejected, and I do so.

21. The third issue arising for consideration is with reference to the provisions under Chapter IX of the impugned statute. Section 39 thereunder reads as follows: -

“Display of the certificate of registration and other information by the clinical establishment. -

(1) Every clinical establishment shall display, in a conspicuous place in the clinical establishment its certificate of registration, provisional or permanent.

(2) Every clinical establishment shall display, in a conspicuous place in the clinical establishment in Malayalam as well as in English the fee rate and package rate charged for each type of service provided and facilities available, for the information of the patients.

(3) All clinical establishments in the State shall display package rates for specific procedures.

(4) No clinical establishment shall charge fees or package rates more than what is displayed.”

It is the contention raised by the petitioners that every clinical establishment is

to mandatorily display the "fee rate" and "package rate" with respect to the services provided and the facilities available, including the procedures, and that no clinical establishment is to charge fee/package rates more than what is displayed. The learned counsel contend that the statute is silent as to what is "fee rate" and "package rate," and hence the provisions have to be struck down as unenforceable.

22. However, this Court notices that the Apex Court as well as this Court have already issued appropriate directions to enforce the provisions of the Central Act and the State Act, respectively, as under.

23. The Apex Court as per order dated 27.02.2024 in Writ Petition (Civil) No.648 of 2020 noticing the submission made from the side of the Union of India that unless there is response from the States, fixation of rates cannot be carried out, directed the Secretary, Department of Health, Union of India to hold a meeting with its counter parts in the State Governments/Union Territories and to come up with a concrete proposal. Similarly, a Division Bench of this Court in Sabu P. Joseph (Adv.) v. State of Kerala and Others [2021 (4) KHC 225] has already directed every private hospital in the State to display rates and fees of the service given to the public as required under Section 39 of the Act read along with Rule 19 of the Rules. In the light of the afore, the petitioners are not entitled to raise any challenge with reference to Section 39, as noticed above. This is all the more so, since the petitioner in W.P(C)No.1365 of 2019 (Kerala Private Hospitals Association) and the petitioner in W.P(C) No.29353 of 2019 (Indian Medical Association) were the additional 5th and the 9th respondents respectively before the Division Bench of this Court and it is after hearing them also, that the Division Bench issued the directions as above.

24. The fourth issue arising for consideration is with reference to the unbridled powers of the authorities under statute, as regards the suspension/cancellation of the registration. It is the contention raised by the petitioners that the provisions of Section 14(3) of the Act provides for cancellation/suspension of registration when there is "imminent danger to public health" without defining what is "imminent danger". They contend that on account of the afore, uncanalised powers are vested on the statutory Authority for the cancellation of registration. However, this Court notices that Section 14, falling under Chapter IV, provides only the "Authority for registration". Sub-section (1) thereto provides for the constitution of the Authority in the manner prescribed therein, sub-section (3) only lays down the "functions" of the Authority and also provides for cancelling the registration. Sub-section (3); under clause (a) speaks about granting/ renewal/suspension/cancellation of registration. However, the power for registration/cancellation is not laid down under Section 14(3) as contended. Registration is provided by virtue of Section 15 (conditions for registration), Section 16 (registration of clinical establishments), Section 17 (application for provisional registration), Section 18 (validity of provisional registration), Section 19 (application for permanent registration), etc. Cancellation, on the other hand,

is prescribed under Section 25, which reads as follows: -

“25. Cancellation of registration-

(1) If, at any time, after any clinical establishment has been registered, the Authority or the Council is satisfied that,-

(a) the conditions of the registration are not complied with;

or

(b) the clinical establishment has knowingly or negligently carried out an act that is harmful to the health of the person seeking care from the clinical establishment, it may issue notice to the clinical establishment to show cause why its registration should not be cancelled for the reasons to be mentioned in the notice.

(2) Where the Authority or Council is satisfied, after giving a reasonable opportunity to the clinical establishment to be heard, that there has been a breach of any of the provisions of this Act or the rules made thereunder, it may, without prejudice to any other action that may be taken against such clinical establishment, by order cancel its registration.

(3) Every order made under sub-section (2) shall take effect,-

(i) where no appeal has been preferred against such order immediately on the expiry of the period prescribed for such appeal; and

(ii) where such appeal has been preferred and it has been dismissed, from the date of the order of such dismissal:

Provided that the Authority, after cancellation of registration, for reasons to be recorded in writing, shall restrain immediately the clinical establishment from functioning, if there is imminent danger to the health and safety of patients.”

A reading of the afore would show that the cancellation of registration is not merely for the asking, as portrayed by the petitioners. The Authority has to arrive at a satisfaction that: -

i. The conditions of registration are not complied with,

ii. Clinical establishments have knowingly or negligently carried out an act that is harmful to a person seeking treatment.

Furthermore, the provision does not provide for an automatic cancellation. It provides for the issuance of a show cause notice to a clinical establishment, granting of a reasonable opportunity of hearing, etc., prior to the actual cancellation of the registration. Sub-section (3) also provides that cancellation shall take effect if no appeal is preferred against the cancellation order within the period prescribed for filing the appeal, and in case an appeal is preferred, when the appeal has been dismissed. Again, sub-section (3) to Section 25 also takes

care of the contentions raised by some of the petitioners that, on account of the cancellation, the hospital would have to throw out the patients. True, the proviso thereto entitles the Authority to restrain the hospital from functioning, immediately in the event of there being an imminent danger to the health and safety of patients. The afore power vested in the Authority under the proviso also cannot be said to be unconstitutional or arbitrary, insofar as it is only on recording of reasons in writing, such a power can be exercised. In other words, so as to invoke the proviso to sub-section (3), the extraordinary circumstances have to be found and reduced to writing.

25. Therefore, in my opinion, utmost care has been taken while conferring power for the cancellation of registration on the Authority. This Court further notices that under Chapter VII, an Appellate Authority under Section 34 and a revision to this Court under Section 35 have also been provided. Therefore, I am of the opinion that there is no uncanalised power bestowed on the Authority with respect to the cancellation of registration.

26. This Court also notices that it is not the mere ipse dixit, without any supporting reason, that attracts the rigours of Section 25. The provision makes this clear by the usage of the expression "satisfied". Therefore, "satisfaction" of the Authority is a condition precedent for cancellation under Section 25. It is not as if the Authority can cancel registration at its will. This Court notices the following observation made by Lord Denning in *Secretary of State for Education and Science v. Metropolitan Borough of Tameside* [[1976] 3 All ER 665 (CA)],

"To my mind, if a statute gives a Minister power to take drastic action if he is satisfied that a local authority have acted or are proposing to act improperly or unreasonably, then the Minister should obey all the elementary rules of fairness before he finds that the local authority are guilty or before he takes drastic action overruling them. He should give the party affected notice of the charge of impropriety or unreasonableness and a fair opportunity of dealing with it. I am glad to see that the Secretary of State did so in this case. He had before him the written proposals of the new council and he met their leaders. In addition, however, the Minister must direct himself properly in law. He must call his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to that which he has to consider. And the decision to which he comes must be one which is reasonable in this sense, that it is, or can be, supported with good reasons or at any rate be a decision which a reasonable person might reasonably reach. Such is, I think, plain from *Padfield v Minister of Agriculture, Fisheries and Food* which is a landmark in our administrative law and which we had in mind in *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)*. So much for the requirements if the Minister is to be 'satisfied'."

In the light of the afore, it goes without saying that unless the cancellation is proved and supported with material facts and figures, the same is subject to judicial review. However, that cannot be a reason to contend that excessive

powers are bestowed on the statutory Authority. To the same effect is the judgment of our Apex Court in *Barium Chemicals Ltd. and another v. Company Law Board and others* [AIR 1967 SC 295].

27. The fifth issue arising for consideration is with reference to the contention raised by Sri. Poonthotam, on behalf of the Indian Dental Association, regarding Section 3 of the Act. Section 3 provides for the "establishment of the State Council". According to him, Section 3(2)(j)(i) provides for the inclusion of "one representative from welfare organisations of the patients in the State". Similar inclusion is also made with reference to the constitution of the "Executive Committee" under Section 8 and it is contended that since the Council and the Committee are expert bodies, the inclusion as above is quite illegal and arbitrary. This Court is not in a position to accept the afore contention insofar as the State Council and Executive Committee visualise inclusiveness by providing for representation from the side of patients also, however, to be nominated by the Government from various welfare organisations. This Court further notices that representatives from the side of some of the petitioners, like the Indian Dental Association and the Indian Medical Association, are included in the constitution of the State Council. When the State Council can include representatives from the side of the service providers, like petitioners herein, it goes without saying that service recipients should also be included in the Council/Committee. Therefore, the contention with reference to the constitution of the State Council and the Executive Committee is only to be recorded and rejected.

28. The last question arising for consideration is with reference to the contentions raised in the writ petition filed by individual dentists regarding the inclusion of "dentistry" in the impugned Act. The contentions raised are essentially to the effect that "dentistry" cannot be equated with "public health and sanitation" as well as "hospitals and dispensaries," and hence, the inclusion of dentistry in the impugned enactment is without legislative competence.

29. The Act in question under Section 2(j) defines the "recognised system of medicine" as under: -

"(j)"recognised system of medicine" means Modern Medicine (including dentistry), Naturopathy, Ayurveda, Homoeopathy, Sidha and Unani systems of medicine or any other system of medicine recognised by the Government;"

True, the Central Act under Section 2(h) defines "recognised system of medicine" as under: -

"(h) "recognised system of medicine" means Allopathy, Yoga, Naturopathy, Ayurveda, Homoeopathy, Siddha and Unani System of medicines or any other system of medicine as may be recognised by the Central Government;"

Therefore, on a cursory reading of the definitions, it may give the idea that the Central Act does not cover "dentistry," whereas it covers "Allopathy."

30. However, it is to be straight away noticed that the legislative competence of

the State Legislature to legislate on "public health and sanitation" on the basis of which the Act in question is enacted has been separately considered and found in favour of the State. When that be so, it goes without saying that the State Legislature is competent to enact the statute in question with reference to "recognised system of medicine" by defining the said term.

31. This Court is also of the opinion that "recognised system of medicine" is defined to mean "modern medicine" which would also include "dentistry". The term "medicine" not being defined under the statute, it is worthwhile to refer to the definition of the said term as available in Corpus Juris Secundum, Volume 70, which reads as under: -

"Medicine" means a science or profession indicating an art of healing or science which has for its province the treatment of diseases generally,

The practice of medicine, as ordinarily or popularly understood, has relation to the art of pre-venting, curing, or alleviating disease or pain. It includes the diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition. It also includes the application and use of medicines and drugs for the purpose of curing, mitigating, or alleviating bodily diseases, but it does not wholly depend on the administration of drugs.

It may be said to consist in three things: in judging the nature, character, and symptoms of the disease, in determining the proper remedy for the disease, and in giving or prescribing the application of the remedy to the disease."

Thus, the art of preventing/curing/ alleviating disease or pain through diagnosis, treatment, operation, etc., amounts to the practice of medicine. Dentistry is only a specialisation in the practice of medicine, like orthopaedics, obstetrics, etc. In Corpus Juris Secundum, Volume 70, the term "dentistry" is defined as under: -

"Dentistry" is a special department of medical science embracing the structure, function, and therapeutics of the mouth and contained organs, specifically the teeth, with their surgical and prosthetic treatment. The practice of dentistry includes treating pain of the human teeth, oral cavity, alveolar process, gums, or jaws, and supplying artificial teeth as substitutes for natural ones, and taking impressions of the teeth and jaws."

(Underlining supplied)

Therefore, the fact that dentistry is only a specialised department of medical science is also beyond doubt.

32. Reference may also be made to the definition of the word "dentistry" from Encyclopaedia Britannica, Volume 7, to the following effect: -

"Dentistry is the healing art concerned with the health of the mouth, especially the teeth. It is also the profession practising this art."

This Court also notices the definition of the term dentistry in Taber's Cyclopaedic

Medical Dictionary, 21st Edition, which reads as follows: -

"The branch of medicine dealing with the care of the teeth and associated structures of the oral cavity. It is concerned with the prevention, diagnosis, and treatment of diseases of the teeth and gums."

From all the above, it is quite clear that dentistry is part of "modern medicine", and it is made clear through the definition of dentistry under Section 2(j) of the Act. Assuming for a moment that dentistry is not covered under the Central Act, nothing prevents the State Legislature from including "dentistry" with reference to the definition of the term "recognised system of medicine" under the State Act.

33. Therefore, I am of the opinion that the inclusion of "dentistry" under section 2(j) of the impugned Act cannot be found fault with, as one made without legislative competence.

34. Some broad contentions with reference to the non-issuance of notification under Section 4(1)(g), impossibility to comply with provisions of Section 47 dealing with treatment in emergencies, non-inclusion of medical colleges under Section 2(c), etc., are also raised by some of the petitioners. As regards the non-issuance of notification under Section 4(1)(g), the issue would arise for consideration only when appropriate steps have been taken against the clinical establishments, with reference to the factual position. Similarly, the provisions of Section 47 and the impossibility pointed out would arise with reference to the penal provisions under Chapter V. As already noticed, the Act does not provide for an automatic penal action. Again, medical colleges do not require a specific inclusion in the definition of the term "clinical establishment". The violation of privacy, etc., have also been raised, which do not arise for consideration in these writ petitions insofar as the lack of legislative competence is being primarily raised in these writ petitions.

35. At this juncture, this Court takes notice of the submissions made by S/ Sri.Kannamthanam, Mather as well as Poonthottam, the learned senior counsel that there are certain practical difficulties faced by the clinical establishments on account of the implementation of the provisions of the Act and Rules. Many of the practical difficulties pointed out by the respective senior counsel have been noticed in paragraphs 6,7, and 8 of this judgment. Though, I have held that merely on account of the arbitrariness of a statute, the same do not require to be declared unconstitutional, I am of the opinion that liberty is to be granted to the petitioners to point out the practical difficulties faced by them before the Government and it is for the Government to consider the practical difficulties to be pointed out by the petitioners and to adopt such remedial measures, which it deems fit, in totality of the interest of clinical establishments as well as the beneficiaries of the statute in question.

Subject to the afore liberty granted to the petitioners herein, these writ petitions would stand dismissed.