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**(1987) 07 PAT CK 0045**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Cases No. 5147 and 5303 with 5205 of 1985.

Mahendra Narain and 2 ors

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

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**Date of Decision :** 27-07-1987

**Acts Referred:**

Bihar Private Medical Colleges (Taking Over) Act, 1977 — Section 2(E), 3, 3(1), 4, 4(2)  
Constitution of India, 1950 — Article 14, 16, 166  
Indian Medical Council Act, 1956 — Section 14, 19A, 19A(2), 33, 33(j)

**Citation :** (1989) PLJR 344

**Hon'ble Judges :** S.B. Sanyal, J

**Bench :** Single Bench

**Advocate :** Ram Chandra Pd. Singh, Sudhir Kr. Katriar, Ravi Shanker Pd. and Alok Kr. Sinha in 5147/85; Basudeo Pd.; Anil Kumar and Sunil Kumar in 5303 and 5205/85, for the Appellant; Ram Balak Mahto with Amar Nath Mishra (in 5147/85) and with Syed Rafat Alam (in 5303 and 5205/85) for the State and M/s Tara Kant Jha, S.B.N. Singh and Krishna Pd (in 5147/87), for the Respondent

**Final Decision :** Allowed

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## Judgement

S.B. Sanyal, J.—These three writ petitions has been heard together because of some common points involved. This judgment will govern them all. For proper appreciation of the respective cases. I have summarised the facts of each case separately.

C.W.J.C. No. 5147 of 1985.

The petitioner, who is a Doctor-cum-teacher in the Department of Medicine in Nalanda Medical College Hospital, Patna seeks issuance of a writ of mandamus directing respondents no. 1 to 3 to declare the petitioners to be an Associate Professor in the Nalanda Medical College Hospital with effect from 10.2.1978 and to include him in the list of Associate Professors dated 1.2.1985 (Annexure-22) for being considered for promotion to the post of Professor in the Department of Medicine in all the Medical Colleges of Bihar and to quash the provisional

seniority list of Assistant Professors dated 21.9.1985 (Annexure-27), wherein the petitioner is shown in serial no. 15. By amendment of the writ petition a further prayer has been made to quash Annexure-31 promoting the respondents as Professors ignoring and without considering the claim of the petitioner who is the senior most associate Professor in the State of Bihar.

2 According to the petitioners, he passed M.B.B.S. examination in the year (sic) from Prince of Wales Medical College, Patna University. During the period July, 1969 to February, 1975 for a period of five years nine months, the petitioner is said to have performed the duty of a Registrar in Fezakerley District General Hospital. Liverpool, University of Liverpool (U.K.), teaching-cum-clinical assignment from July 1969 to December, 1973. In 1973 the petitioner passed his M.R.C.P. from U.K. But he continued to stay in England and in January, 1974 he joined Hammersmith Hospital, Post Graduate Medical School, University of London and continued upto March, 1974 as a clinical fellow. Thereafter, he joined St James Teaching Hospital Area Health Authority (Teaching). Leeds, U.K., as Consultant Physician and Clinical Lecturer for the period March, 1974 to February, 1975. In this process the petitioner acquired teaching-cum-clinical experience of about five years nine months in different Medical Institutions in England. On his return from England he got appointment letter from Nalada Medical College as an Assistant Professor of Medicine vide letter dated 30.6.1975/1.7.1975 and he joined his post after due selection by the Management on 24.6.1975 (Annexure 2, 3 and 4.).

3. Nalanda Medical College was a private Medical College. The Government by an Ordinance, known as Bihar Private Medical College (Taking Over of Management) Ordinance, Bihar Ordinance no. 36 of 1977, (hereinafter referred to as the Ordinance), took over the Management of the said College. The management of the college vested in a Board of Control constituted under the Ordinance. There were vacancies for the post of Associate Professor. In order to find out the suitability of the petitioner's appointment as an Associate Professor, he was asked by the Board of Control to furnish all his testimonials and certificates and other biodatas to Professor U.R. Bhardawaj, Head of the Department of Physiology, for adjudging his teaching experience (Annexure-5). All relevant papers, materials and the biodata furnished by the petitioner was sent to the Medical Council of India to find out his eligibility for being appointed as an Associate Professor. The Secretary of the Medical Council of India wrote to the Chairman on 2.1.1978/11.1.1978 that in supersession of all previous letters from this office in this regard the Executive Committee of the Council in their meeting held on 13th December, 1977, found the petitioner eligible as Associate Professor of Medicine. On 10th February, 1978, the petitioner was given the designation of Associate Professor, Medicine, on a temporary basis on the basis of the said decision of the Medical Council of India (Annexure-7). Petitioner pursuant thereto joined his duty as Associate Professor of Medicine on and from 10.2.1978 (Annexure-8). The action of the Chairman was approved by the Board of Control on 12.4.1978 (Annexure-8) and a certificate seems to have also been issued by

the Principal of the College in this regard on 29.8.1978 (Annexure-10). Respondent no. 5, Dr. Akhilesh Sharan, and respondent no. 7, Dr. D.K. Shrivastava are said to have been promoted as Associate Professor on 20.7.1978. The Bihar Private Medical Colleges Taking Over, Act, 1978 (hereinafter to be referred to as the Take Over Act), Bihar Act 5 of 1978, was enacted. All Private Medical Colleges in the State of Bihar was taken over by the Government and u/s 6 (2) of the said Act, the State Government constituted a Committee known as Screening Committee of Experts to examine the biodata of each member of the teaching Staff and ascertain whether appointment, promotion or confirmation that was made hitherto is in accordance with the University Regulations and in conformity with the guidelines laid down by the Medical Council of India. The Screening Committee was required to take into consideration all relevant materials including length of service in the College, whereafter u/s 6 (3) of the Take Over Act the State Government would decide in respect of each member of teaching Staff on the merit of each case, whether to absorb him in Government service or to terminate his services or allow him to continue on an adhoc basis and/or re-determine the rank, pay, allowances etc.

4. Upon issuance of Notification dated 22.1.1979 u/s 3 (1) of the Take Over Act the Board of Control, constituted under the Ordinance, came to be dissolved u/s 4 (a) of the Take Over Act. The College was granted temporary recognition for the Award of M.B.B.S. degree from the Magadh University and the same was being extended on the basis of inspections held by the Medical Council of India from time to time. One of such inspection report forwarded by the Secretary, Medical Council of India to the Registrar, Magadh University, on the basis of observation of the Inspectors held in February 1979, is dated 30th March, 1979. The inspection report of the Inspectors of the Council, which is an enclosure to the said letter showed that the petitioner and Dr. B.B. Sinha (petitioner in C.W.J.C. no. 5205 of 1985) are Associate Professor of Medicine with eight years" teaching experience (Annexure-12). The Principal, however, replied to the said letter and reported, on amongst other, that the petitioner and Dr. B.B. Sinha are Associate Professor with nine years teaching experience (Annexure-13). There was another inspection by the Medical Council of India for the purposes of extension of recognition and such an inspection was held on March, 1980, and the Medical Council of India decided that the temporary recognition of the College be extended for a further period of one year that is up to 30.4.1981. It found that in the Department of Medicine five posts of Associate Professor have been filled up and the incumbent on the fifth post is on leave (Annexure-14). The temporary recognition was again extended up to 30th April, 1982, pursuant to a similar inspection by the Medical Council of India on 7.4.1981 and it approved the continuance of the existing staff as they fulfilled the requirement of the Regulation and/ or guideline of the Medical Council of India (Annexure-28).

5 This was followed by another inspection report in December, 1981 by the Medical Council of India suggesting to fill up the various teaching posts laying vacant on priority basis as also construction of Hospital etc. The Screening

Committee constituted earlier on 19.9.1978 (Annexure-15) submitted a report on 15.3.1980 (Annexure-20). At page 39 of the proceeding of meeting of the Screening Committee published by Government of Bihar, department of Health in Booklet form, petitioner was shown to be eligible as Assistant Professor, Medicine, since June, 1978 and the decision as to the validity of petitioner's appointment as an Associate Professor was postponed for consideration till receipt of the advise from the Medical Council of India regarding his teaching experience abroad. At page 29 of the Booklet, the Committee stated that they have counted teaching experience gained in recognized teaching Institution in India. So far as teaching experience gained abroad they have only considered the teaching experience gained by the teachers in Wels National Medical School Hospital, Cardiff University of Liverpool. For teaching experience gained elsewhere the matter to be referred to the Medical Council. The petitioner submitted his representation to the said report vide Annexure-21 where the petitioner gave all details resulting in his appointment as an Associate Professor as also his having been already screened by Medical Council of India and found eligible for the post of Associate Professor and his legitimate continuance on the said post. It was contended that the decision of his eligibility as an Associate Professor by the Medical Council of India is a closed Chapter and can not be further awaited. The College gained recognition on the basis of his being Associate Professor of the College fulfilling the requirement of staffing pattern as required by Medical Council of India for recognition and on the same basis the respondents went on obtaining renewed recognition. The recommendation of the Screening Committee, therefore, so as far as the petitioner is concerned, be cancelled and he be confirmed to the post of Associate Professor, to which he was appointed after consultation with the Medical Council of India on 10th February, 1978. According to the petitioner, he should now be considered for promotion to the post of Professor in the light of the order of the Patna High Court passed on 27th November, 1979 in C.W.J.C. no. 4554 of 1978 to which the petitioner is a party (See 1981 Bihar Bar Council 510). The respondent-Government wrongly prepared the list of fourteen Associate Professors excluding the petitioner, as eligible for promotion to the post of Professor of Medicine and asking their place of choice (Annexure-22). Subsequently, a seniority list of Assistant Professors was prepared by respondent no. 1 on 21.9.1985 wherein the petitioner has been wrongly shown at serial 15. In spite of High Court's interim order dated 22.11.1985, on 3.12.1985 eight respondents were promoted as Professor of Medicine (Annexure-31) without considering the case of the petitioner for such promotion. It may be stated here that on 22.1.1986 this Court while admitting the writ application, ordered that any appointment or promotion made during the pendency of the writ petition will be subject to the result of the case.

6. C.W.J.C. no. 5205 of 1985 : In this writ petition the petitioner, Dr. Binod Bihari Sinha, who is similarly a teacher in Medicine in Nalanda Medical College, seeks quashing of Annexure-7, dated 21.9.1985, wherein the petitioner has been

shown at serial no. 16 as an Assistant Professor of Medicine even though at the relevant time he was an Associate Professor as also Annexure-8 dated 1.2.1985 the prepared panel of Associate Professors, who were to be considered for promotion as Professor but did not include the name of the petitioner and further to issue directions to the respondent State to absorb the petitioner as an Associate Professor with effect from 10.2.1978 and he has been working as an Associate Professor since then and for a further direction to consider his case for promotion as Professor along with all eligible Associate Professors and for declaring the promotion of respondents 3 to 7 and 11 to 13 (vide Annexure-14 of amendment petition) as void in breach of Articles 14 and 16 of the Constitution of India as well as in implied breach of stay order passed by this Court dated 11.11.1985.

7. On 1.7.1975 the petitioner was appointed as Assistant Professor of Medicine in Nalanda Medical College (Annexure-1) and worked as Assistant Professor till 9th February, 1978. As the management of the College was taken over under the Bihar Ordinance 131 of 1976 the College came to be governed by Board of Control. The Board of Control, on 4.9.1971 took a decision to refer the cases of teachers to the Medical Council of India by forwarding the qualification of the teachers and their teaching experience. On 15.12.1977, the Chairman of the Board of Control was informed that the Executive Committee of the Council in their meeting held on 13.12.1977, the petitioner may be appointed to the post of Associate Professor (Annexure-10). On 10.2.1978 after receiving the recommendation of the Medical Council of India as per the order of the Chairman the petitioner, like Dr. Mahendra Narain, was designated as Associate Professor in Medicine on a temporary basis (Annexure-2) on 10.2.1978. The Board of Control affirmed the action taken by the Chairman which resulted in provisional recognition of the College by the Medical Council of India (Annexure-3). In the mean time, Bihar Act 5 of 1978 came into force by which the College was taken over by the State of Bihar. A Screening Committee was constituted u/s 6 (2) of the Take Over Act to screen the teaching Staff of the College to find their suitability in the right of the decision in C.W.J. Cs no. 4554 and 5004 of 1976 to which this petitioner was party. That writ petition challenged the vires of the Take Over Act with a further prayer that the teachers of the taken over Colleges should continue to hold the post that they were holding on the date of take over without change of status and emoluments. The writ petitions were admitted on 5.10.1978, while admitting the writ petitions, an interim order was passed restraining the respondent State from filling up the vacant teaching post of the Nalanda Medical College by persons who are not teachers of the said College. A Supplementary affidavit was filed on behalf of the Government in C.W.J.C. no. 5004 of 1978 for vacating the interim order of stay stating therein:

That, all the existing teachers of the private Medical Colleges would be certainly considered and as far as practicable absorbed in the highest post they are found fit. (Annexure-4, Para 4).

8. In paragraph 3 of the said affidavit the qualification required for being appointed as Associate Professor as laid down by the Medical Council was referred to. It was said that for being considered for appointment as a lecturer/Assistant professor the minimum teaching experience is of three years on junior teaching post i.e. Tutor and similarly three years teaching experience as a lecturer/Assistant Professor for being considered to be appointed as Associate Professor. For being appointed as Professor one must have experience of five years as an Associate Professor. The qualification referred to in the said supplementary affidavit is, in fact, the requirement of 1974 guidelines of the Medical Council. The two writ petitions were disposed of by consent judgment on 27th November, 1979 (Annexure-5):

It is also conceded by both the counsels that the State Government can alter the terms and conditions and terminate the services of the teaching staff provided their selection was not in accordance with the University Regulation and on the basis of the guidelines laid down by the Medical Council of India. In other words, it is conceded that sub-section (3) of section 6 of the Act (Take Over Act) is being controlled by sub-section (2) of section 6 of the Act. Thus, the State Government under sub-section (3) can terminate the services of any of the teaching staff which was not made in accordance with the university Regulation and on the basis of the guideline laid down by the Medical Council of India and not otherwise. If these two conditions are not fulfilled then the State Government: has authority to terminate the service of any of the teaching staff. In other words these petitioner will not be placed before second Screening Committee or the second Selection Board for their appointment we therefore, direct that these petitioner should be promoted according to their claim, if any, subject to the directions of the State Government. The respondents are further directed to follow the principle laid down in this case and in all other identical cases of the teaching staff of all the private Medical Colleges which have been taken over by the State Government.

9. The Screening Committee met to consider the case of the petitioner in the light of the aforesaid judgment but, in so doing the Screening Committee decided to screen the teachers on the basis of 1971 Regulation of the Medical Council of India approved u/s 33 of the Medical Council Act, 1956. At page 39 of the booklet of the Screening Committee (Annexure-20) the petitioner was shown eligible for Assistant Professor, Medicine, since July, 1978 and his claim about teaching experience in Kurji and R.M.R. I was directed to be referred to the Medical Council of India for their opinion.

10 The petitioner filed his representation stating therein that he was appointed as an Associate Professor by the Chairman of the Board of Control after his eligibility was duly considered and tested by the Medical Council of India as per the letter of the Medical Council of India dated 16th December, 1977, to the Chairman, Board of Control. It was also contended that the eligibility of the petitioner ought to have been considered on the basis of 1974 Medical Council of

India Guideline and not by 1971 Regulation. The Government of Bihar and its department of Health had itself notified and adopted the 1974 Guideline vide Notification no. 1/C 1/703/74-7377 (1) dated 23.11.1976 (Annexure-B, paragraph-3). The Screening Committee, therefore, adopted a wrong criteria by resort to 1971 Regulation; therefore its recommendation cannot be accepted. It was also contended that in view of the judgment of this Court the petitioner having fulfilled the 1974 guideline of the Medical Council of India was entitled to hold and to be absorbed as Associate Professor of Medicine in Nalanda Medical College but the Screening Committee and the State Government erred in taking a decision to absorb the petitioner as Assistant Professor of Medicine with effect from 1.7.1978 treating his experience between 1.7.1975 to 30.6.1978 as Junior Teacher. After having so done, Annexure-V was issued retrospectively demoting the petitioner from the post of Associate Professor to Assistant Professor, illegally and arbitrarily against the interim stay order. The illegality was perpetrated further by not including the name of the petitioner for consideration for the appointment of Professor in the Government Panel of Associate Professors prepared on 1.2.1985 (Annexure-8). The petitioner has also drawn attention of the Court to the report of the Medical Council of India during the period February, 1979 showing the petitioner as an Associate Professor with eight years teaching experience (Annexure-9).

11 C.W.J.C. no. 5303 of 1985 : In this case the petitioner, Dr. Vijay Kumar Srivastava, seeks a direction commanding the State Government to absorb the petitioner as Associate Professor of Surgery with effect from 10.2.1978 and further promoting him to the post of Professor of Surgery in Nalanda Medical College, Patna. He is aggrieved by the decision of the Screening Committee holding him eligible an Assistant Professor of Surgery since 10.2.1978 and the Screening Committee's reference as to the validity of his appointment as Associate Professor only to be considered after receipt of advise from Medical Council of India regarding his experience abroad. The petitioner seeks direction that his name should be omitted from the list of Assistant Professors of Surgery dated 3.4.1986 (Annexure-10/1) which is against the teeth of interim order dated 15.11.1985 restraining the State from demoting him, as also to include him in the panel of Associate Professors (Annexure-16) dated 12.3.1986 which was prepared without considering the case of the petitioner, to appear and give their consent for promotion and posting as Professor of Surgery. He further prays for direction to implement the consent judgment in C.W.J.C. no. 5004 and 4554 of 1978 dated 27.11.1979.

12 Facts : The petitioner claims to be Registrar West Bromwich and District General Hospital and Hallam Hospital, a post-graduate Medical Centre linked to the University of Birmingham for the period January, 1969 to May, 1973. From May, 1973 to August, 1974, he worked as Medical Assistant (Senior Registrar Grade) and Lucum Consultant. He also gathered research experience during the period of foreign teaching (See Ann. 13 series). On 25.7.1975 the petitioner was appointed as Assistant Professor of Surgery by the Governing Council of the

Nalanda Medical College. On 16.12.77 vide Annexure-9 Medical Council of India recommended for appointment of the petitioner as Associate Professor of Surgery and reiterated the same on 11.1.1978 vide Annexure-12. Thereafter, on 10.2.1978 the petitioner was promoted as Associate Professor on the recommendation of Medical Council of India as per the orders of the Chairman, Board of Control in consultation with Principal (Annexure-2). The Board of Control re-affirmed the action taken by the Chairman on 12.4.1978 (Annexure-3). After the nationalization and Take Over of the College by the Take Over Act of 1978, Government constituted a Screening Committee under the Take Over Act which was also challenged by the petitioner in C.W.C. Cs no. 4554 and 5004 of 1978. In the said petitions the Government filed a supplementary affidavit to vacate the order of stay referring to the qualification provided by 1974 Guideline of the Medical Council of India with an assurance that the petitioner will be absorbed to the highest post if they are found fit fulfilling the said qualifications. In February, 1979 the Medical Council of India submitted an inspection report showing the petitioner as Associate Professor of the College (Annexure-7). On 27.11.1979 the two writ petitions aforesaid were disposed of by a consent judgment; the contents of which have already been extracted in extenso earlier. On 15.3.1980 the Screening Committee met to consider the case of the petitioner and on the basis of 1971 Regulation of the Medical Council of India, the petitioner was stated to be eligible as Assistant Professor since July, 1978. The discussion as to the validity of petitioner's appointment as Associate Professor was postponed till the advise of Medical Council of India on foreign teaching experience is obtained. The petitioner filed a representation against the report of the Screening Committee (Annexure-6) but curiously the petitioner was excluded from the panel to be considered for being appointed as Professor (Annexure-10) and the petitioner was shown in the impugned panel of Assistant Professors (Annexure-10/I). In short, inspite of petitioner's being appointed as an Associate Professor after obtaining the opinion of the Medical Council of India some time in 1978 the Government held him eligible only as Assistant Professor of Surgery since 10.2.1978 on the basis of the report of the Screening Committee, which is per se illegal, void without jurisdiction and is in breach of the direction of the High Court contained in C.W.J. Cs no. 4554 and 5004 of 1978.

13 The State has filed counter-affidavit in C.W.J.C. no. 5227 of 1985 and has prayed that this should be treated as counter-affidavit in all these cases as well. As per order dated 12.11.1986, the State has filed copies of the said counter-affidavit in all these cases to complete the records. The stand of the State is that the criteria to be applied as required u/s 6 (2) of the Take Over Act is to determine the eligibility of a person to hold a particular post, according to the requirement of 1971 Regulation of the Medical Council of India which has been framed u/s 33 (j) of the Indian Medical Council Act, 1956 and approved by the Government of India in June, 1971. Other criteria that has been circulated by the Medical Council of India after 1971 are recommendations but not regulation, therefore is not legal and binding, fn paragraph no. 8 of the counter-affidavit the

State is stated to have re-designated the teaching posts, namely, Professors as Professors; Lecturers as Associate Professors; Tutors as Assistant Professors; Registrar and Resident Officer as Registrar and Resident; but this decision is stated to have been taken by Resolution dated 23rd November, 1976 which has been annexed and marked Annexure-B. Apart from the re-designation in paragraph no. 3 of the said Resolution it has also been stated that the existing criteria for confirmation in the teaching post would be as hereunder :--

(a) for becoming Assistant Professor one must have three years' teaching experience in junior teaching post;

(b) for Associate Professor one must have three years' experience as Assistant Professor; and

(c) for becoming Professor one must have experience of five years as Associate Professor.

This, however, is the requirement of revised recommendation of the Medical Council of India in the year 1974 (which will hereinafter to be referred to as 1974 Guideline). It has also been stated that the petitioners were not eligible to be appointed as Associate Professor "on the basis of the Guideline laid down by the Medical Council of India or University Statute". The Committee was constituted u/s 6 of the Take Over Act to screen the eligibility of the teachers on the basis of 1971 Regulation, which is the only approved Regulation. The Committee did not find the petitioners eligible, therefore they were not validly appointed as Associate Professor. It has also been submitted that the petitioners were never appointed as Associate Professor but they were "temporarily designated by the Chairman of the Board of Control". The Chairman in his letter dated 13.7.1978 has clearly stated that the question of their final appointment and promotion will be subject to the approval of the Government's final decision in the matter (Annexure-C). It has further stated that the designation given to the petitioners was subsequently withdrawn on 24.4.1978 saying that the Board of Control is not in a position to rectify the designation unless the clearance from the Government is indicated (Annexure-D).

14 Further, on 2.8.1977 itself the Government issued a direction to the Chairman of the Board of Control that without obtaining prior approval from the Government no decision should be taken by the Board of Control in regard to promotion of the teachers (Annexure-E). The designation given by the Board of Control is in violation of the direction of the Government and, therefore, invalid or at best the designation was given temporarily which can not be the foundation of any claim which can be enforced in writ jurisdiction. As to the various letters issued by the Indian Medical Council approving the appointment (paragraph no. 22 of the counter-affidavit) it has been stated that it is of no avail to the petitioner the basic question was whether the appointment as Associate Professor was made validly. The stand of the State further is that (paragraph no. 27 of the counter affidavit) teaching experience for work in foreign country is not

admissible. Dr. Narain, petitioner in C.W.C. no. 5147 of 1985, did not possess three years teaching experience of Registrar or Resident in recognised institution in India which is essential for appointment to the post of Assistant Professor nor was he ever given regular appointment to the post of Associate Professor but was merely designated as Associate Professor. He completed three years teaching experience only in the year 1978 and therefore, the Government has recognised him as Assistant Professor and his experience as Assistant Professor is being calculated from the year 1978. The Screening Committee did not recognize the claim of Dr. Narain with regard to his teaching work abroad. The Government also considered the representation of Dr. Narain against the recommendation of the Screening Committee and in its meeting held on 3.1.1985 and 10.1.1985 rejected his representation on the ground that foreign teaching experience is not admissible. His teaching experience is admissible from 24.6.1975 as junior teacher and from 24.6.1978 as Assistant Professor. Therefore, he could not have been an Associate Professor from 10.2.1978. So far as Dr. Binod Bihari Sinha (petitioner in C.W.J.C. no. 5205 of 1985) is concerned, the Screening Committee found him eligible as Assistant Professor of Medicine since July, 1978 but his teaching experience for working in Kurji Hospital and R.M.R.I. is not admissible. But, the Committee accepted the experience of Dr. Sinha as Junior teacher from 1.7.1975 and as Assistant Professor from 1.7.1978 which has been accepted by the State Government. There is, however, no averment so far as Dr. Srivastava (petitioner in C.W.J.C. no. 5303 of 1985) is concerned, but it seems that his case being parallel to Dr. Mahendra Narain, I will assume that the same in also the stand of the Government with respect to him.

15 Mr. Ramchandra Prasad Sinha, learned counsel appearing on behalf of Dr. Mahendra Narain, has submitted that on the Taking Over of the Management of the private Medical Colleges, the power to manage the College vested completely in a Board of Control for the management of the Institution and the said Board was authorised to take such steps as may be necessary for the purpose of efficiently managing the College and shall exercise such other powers as may be found u/s 4 of the Management Act. The Board of Management, however, is required to function under the Control of the State Government. u/s 16 of the Management Act the State Government is empowered to give direction to the Board as they deem fit for the proper management of the College and if the Board violates the direction, the State Government is empowered to remove the Board and constitute a new Board. According to the learned counsel there is no provision in the Act which required every action to be taken by the Board to be previously approved by the Government. The Government did not cancel the Notification constituting the Board nor gave any direction u/s 16 not to make appointment or do so after approval by the State. The Board, in order to obtain recognition of the College to confer recognised degrees, in their wisdom, took the opinion of Medical Council of India from time to time before designating the petitioners as Associate Professors to conform to the requirement of a teaching Unit in the clinical department. The Unit system required that Unit must have one

Professor/Associate Professor, one Reader/Assistant Professor, one Registrar/Tutor and one Houseman for ten beds. The regulation provided that in case of specialities under Medicine and Surgery the qualifications and experience of teachers should be as required in the Regulation, but difficult cases may be considered on individual merit. To fulfill the requirement for recognition the Board of Management, after having sent all the biodatas of the petitioners, obtained the opinion of the Medical Council of India for the petitioner's appointment and/or their promotion in the Institution. The Medical Council of India kept on inspecting institution from time to time and never raised their finger that the petitioners, who were working as Associate Professors, did not have the requisite qualification; on the contrary, treated them as Associate Professor in the respective discipline fulfilling the requirement for recognition, kept on taking work from the petitioners as Associate Professor, treated them an Associate Professor, enjoyed the recognition of the Institution accepting the petitioners projection as Associate Professor by the Medical Council of India and obtaining recognition of the University by the Central Government, with valid power to confer M.B.B.S. degree. This action on the part of the State amounts to approval of their appointment by the Board of Control as Associate Professor. The State Government is, therefore, estopped to rely upon Annexure-E, the letter dated 2.3.1977, questioning the said appointment as having been made without the State Government's prior approval and/or to question their not being at all appointed but merely designated temporarily to obtain recognition.

16 Mr. Basudeo Prasad, learned counsel appearing on behalf of the two other petitioners, similarly contended that now there is no scope to question the appointments whether done with the approval of the Government or not, and whether they were at all appointed in view of Annexures-C and E of the counter-affidavit. The State has taken full advantage of the efficient management by the Board of Control in obtaining recognition and get it renewed from time to time. Apart from the question of estoppel, the bogey of no appointment or invalid appointment in view of Annexures-C and E is really exhibiting fraud in exercise of executive power to deceive the Medical Council of India and the Central Government, on the one hand, by obtaining recognition of the Institute and the teachers and students, on the other, that they were not at all validly appointed teachers nor the students consequently given valid degrees-it was all a camouflage.

Both the learned counsel, further, contended, relying upon Annexure-6 (C.W.J.C. no. 5147 of 1915), Annexure-10 (C.W.J.C. no. 5205 of 1985) and Annexure-12 (C.W.J.C. no. 5303 of 1985), that the Secretary of the Medical Council of India wrote to the Chairman, Board of Control on 2.1.1978/11.1.1978 on the subject "Teachers eligibility qualifications Appointment of Teachers in Magadh Medical College", in reply to the Chairman's letter of 1st December, 1977, that the matter regarding appointment of the petitioners was considered by the Executive Committee of the Medical Council of India at its meeting held on 13th December, 1977 and found all the petitioners eligible to hold the post of Associate Professor

of Medicine and Associate Professor of Surgery. Thereafter, on 10.2.1978 vide Annexure-7 (C.W.J.C. no. 5147 of 1985); Annexure-2 (C.W.J.C. no 5205 of 1985) and Annexure-2 (C.W.J.C. no. 5303 of 1985) as per direction of the Chairman of the Board, the petitioners were designated as Associate Professor in the respective discipline on a temporary basis. The Board in its agenda, Item no. 4, ratified and affirmed the decision of the Chairman in this direction for facilitating recognition of the College by the Indian Medical Council. There is implied approval of the appointments which is manifest from State's own conduct and representation to the Medical Council. Annexure-E is not even a Government order much less a direction u/s 16 of the Taking Over of the Management Act. All orders of Government, in view of Article 166 of the Constitution, should be made by the Governor, which it is not, therefore Annexure-E has no Validity or legitimacy. The Board ratified the appointments on 12.4.1978 vide Annexure-3 (C.W.J.C. no. 5303 and 5205 of 1985) and Annexure-9 (C.W.J.C. no. 5147 of 1985). Therefore, there could be no question of withdrawing the designation as is contended by the State relying upon Annexure-D dated 24.4.1978. Further, Annexure-D is relevant as it concerns only question of rectification of the designation prayed for by some others. It was also urged forcefully that all these objections cannot be permitted to be raised now after the State having suffered an inter-party judgment in C.W.J.C. no. 5004 and 4554 of 1978 dated 27.11.1979 that the terms and conditions of the doctors of Private Medical Colleges will be altered if their selection was not in accordance with University Regulation or Medical Council of India Guidelines. The teachers, on fulfilment of the aforesaid test shall also be entitled to promotion. This writ petition is actually for implementation of the consent order; the scope of the writ being whether on the date they were appointed they had the required qualification and experience. The power of the State Government u/s 6 (3) is not absolute but one controlled by section 6 (2) of the Take Over Act.

17 Learned counsel have also urged that the Screening Committee did not reject the foreign experience of the petitioners but only observed that their cases as Associate Professor will be examined after advice received from the Medical Council of India regarding their teaching experience abroad which means that the Government will accept the validity of appointment as Associate Professor subject to the report of the Medical Council of India regarding their teaching experience abroad. But, curiously before the opinion was received the promotion to the post of Professors were made treating the report of Screening Committee as final i.e. on the relevant date the petitioners were merely treated as Assistant Professor. Further, Medical Council of India having already expressed their opinion both before and after their appointment as Associate Professor; reference to the Medical Council of India to adjudge once again their eligibility to hold that post is a harassment only to deprive the petitioners of their legitimate right in order to favour a few. Annexures-12,13,14,28 and 29 (C.W.J.C. No. 5147 of 1985) and Annexure-7 (C.W.J.C. No. 5203 1985) namely the reports of the Medical Council of India, copies of which have always been forwarded to the

Government of Bihar, indicated the petitioners promotion as Associate Professor. The stand of the State that the teaching experience acquired in foreign countries is inadmissible is wholly unsubstantial and groundless since it is now well established that teaching experience in teaching Institutions in foreign countries are recognized by the Medical Council of India. Further, according to the learned counsel, the screening Committee adopted wrong norms in Screening the candidate because u/s 6 of the take Over Act the Guideline of the Medical Council of India ought to have been applied and the relevant Guideline at the time of screening was the 1974 Guideline of the Medical Council of India, which ought to have been applied in screening the candidates. The qualification required in 1974 Guideline has also been accepted by the State Government as will be evident from paragraph no. 3 of the decision of the Government (Annexure-B) as also from the Supplementary affidavit filed in C.W.J. Cs no. 4554 of 1978 and no. 5004 of 1978 (Annexure-18 of C.W.J.C. no. 5147 of 1985) i.e. for becoming Associate Professor, one must be three years as Assistant Professor and for becoming Professor one must be for five years as Associate Professor.

18 Learned counsel also contended that under Clause 10 of the Guideline of the Medical Council of India in appropriate cases the qualification and teaching experience requirement could be relaxed depending on the merit of the case. The Medical Council once having approved and rendered their opinion holding them eligible to hold the post of Associate Professor, manifest that the petitioners fulfilled the qualification and experience of the Guideline and/or the Medical Council, after considering the entire biodata, relax, in their wisdom, any deficiency in their experience. In short, the learned counsel submitted that the decision of the Government is in clear violation of the earlier judgment of this Court and in violation of the powers conferred u/s 6 of the Take Over Act.

19 I would first of all like to dispose of two minor contentions raised by the State, disintitling the petitioners to the relief sought for.

20 One of the point is that the petitioners were never appointed as Associate Professor. They were merely designated as Associate Professor in the exigencies of circumstances, namely, the impending recognition of the Colleges by the Medical Council of India. As the petitioners were never appointed but merely designated as Associate Professor they have no legal right to enforce. I do not find substance in this contention for the reason the word "designate" means "select, appoint, nominate, to mark out, to point out, to name, indicate etc." The word "designation" means "also an appointment and assignment to a particular office" (See Black's Law Dictionary, Fifth Edition page 402). I, therefore, hold that when the petitioners were designated as Associate Professors they were appointed to that particular office in order to obtain recognition of the College by the Medical Council of India and consequent recognition of the University by the Central Government (Annexure-15 of C.W.J.C. no. 5303 of 1985).

21 The other point raised by the State is that the teaching experience acquired by the petitioners in a foreign country is not admissible for being reckoned under

Medical Council of India (Paragraph no. 27 of the Counter-affidavit), therefore, it should be ignored in finding out the eligibility of the petitioners" for being promoted as Associate Professor and/or Professor. This question is no more resintegra in view of the decision of the Supreme Court in the cases of State of Bihar and Another vs. Ashish Kumar Mukherjee (A.I.R. 1975 Supreme Court 192) and Dr. Ram Janam Singh vs. State of Bihar (Civil appeal no. 2106 of 1978 decided on 21.11.1986) it was held that teaching experience from teaching Institutions which are linked with and/or recognized teaching Institutions by the Universities and Organisations in Schedule-II and Schedule-III and recognized by the Central Government u/s 14 of the Indian Medical Council Act, 1956, have to be reckoned for appointment-of persons to the post of teachers of Medical College. I, therefore, find no substance in the broad proposition that foreign teaching experience is irrelevant and inadmissible as contended by the State.

22 Next, I will take up the State's objection based on Annexures-E, C & D to the appointment of the petitioners as Associate Professors in Medicine and Surgery in Nalanda Medical College of Magadh University. In point of time Annexure-E is dated 2.8.1977 issued by Mr. P.B. Singh, Joint Director of Health, to the Chairman of Board of Control constituted under the Ordinance. It says that Government has taken a policy decision to take over the Colleges therefore it is requested that before obtaining Government approval no decision of promotion of the teachers be taken. On 13.3.1978 (Annexure-C), the Chairman of the Board of Control wrote to the Principal in view of the impending inspection of the final M.B.B.S. examination of the Medical Council of India and the consequent recognition of the unit system of the various clinical department which have been put into effect, the petitioners and few others be given designation as Associate Professor on temporary basis. The question of their final appointment and promotion will be subject to the approval of Government. On 24.4.1978 (Annexure-D), Principal wrote to all heads of the departments that Board of Control is not in a position to rectify the designation/promotion of certain doctors as Associate Professor unless clearance of the Government is communicated to it. The letter does not spell out the name of the doctors who sought rectification of their designation or promotion.

23 All the petitioners were appointed or promoted as Associate Professor on 10.2.1978 (Annexure-7 to 11 of C.W.J.C. no. 5147 of 1985, and Annexure-2 of C.W.J.C. no. 5205 of 1985). This letter issued by the Chairman of the Board only says that they are designated as Associate Professors on a temporary basis, along with others. It nowhere says that this designation is subject to the approval or final decision of the Government. This letter of appointment appears to have been followed by issuance of Annexure-"C" almost after one month i.e. 13.3.1978, stating their final appointment is subject to the apporoval of the Government. On 12.4.1978, however, the Board of Control of the College held a meeting and under agenda 4, approved and ratified all actions taken by the Chairman in obtaining provisional recognition of the College by the Medical Council of India and appreciated the efforts of the Chairman in this direction.

Then comes Annexure-D dated 24.4.1978, to the effect that rectification of designation cannot be made for certain doctors without communication from the Government. This document does not refer to the petitioners nor there was any question of rectification of petitioners designation, as they had already been designated as Associate Professors.

24 u/s 4 (2) of the Ordinance, the Board of Control was invested with the power to take such steps as may be necessary for the purpose of efficiently managing the College and shall exercise such other powers and such other duties, as may be prescribed, subject to the control of the State Government u/s 16 of the Ordinance the State Government may issue such direction to the Board of Control as the Government may deem fit for the proper management of the College and in the event of non-compliance of such directions the State Government may remove the Board of Control and constitute a new Board. For efficiently managing the Medical Colleges, to obtain recognition of the College and the renewal of the recognition must be of paramount interest for the Board of Control, as otherwise the College will be of no worth even requiring a Board of Management. It was the requirement of the Medical Council Regulation that the teaching unit in the clinical department shall have a Ward of a minimum of 25 beds and a maximum of 60 beds in the principal subjects i.e. Medicine Surgery, Midwifery and Gynecology and 16 beds minimum per unit in the allied specialised subjects and each unit should have one Professor/Associate Professor, one Reader/Assistant Professor, one Registrar/Tutor, one Houseman for ten beds. On introduction of the Unit system and to fulfil this requirement for recognition, the Board of Control was compelled, in the interest of efficient management of the Medical College, to appoint and promote eligible teachers. With this end in view the Board of Control collected the biodata of all the petitioners, referred the same to the Medical Council of India and obtained the approval of the Medical Council of India for appointment and/or promotion as Associate Professor in Medicine and Surgery of the College. The Medical Council of India, after careful scrutiny of the total teaching experience and qualification of the petitioners, found them fit for appointment as Associate Professors which will be apparent from the communications received by the Chairman of the Board as hereunder:

Annexure-6 of C.W.J.C. no. 5147 of 1985 :

No. MCI-12 (II-6) 77-Med./25311 dated New Delhi. Delhi 2.1.78/11.1.78

Sub--Teachers Eligibility qualifications--appointment of teachers in Nalanda Magadh Medical College.

Sir,

With reference to your letter no. 1313, dated the 1st Dec., 1977 on the subject noted above in supersession of all previous letters from this office in this regard, I am to state that the matter regarding appointment of following doctors was considered by the executive committee of this council at its meeting held in 13th Dec., 1977, and I am directed to state that the following are eligible for the posts

mentioned against their names:

1. Dr. Mahendra Narain

.....

Associate Prof. of Medicine.

.....

4. Dr. V.K. Srivastava

.....

Associate Prof. of Surgery.

.....

Yours faithfully, Sd/- U.B. Krishnana.

Annexure-10 of C.W.J.C. no. 5205 of 1985 :

Dear Dr. Mukhopadhyaya,

Kindly refer to your telephone conversation regarding appointment of teachers in Patliputra Medical College, Nalanda Medical College, and Magadh Medical College, Gaya.

The Executive committee of this council at its meeting held on the 13th Dec. 1977. decided that the following doctors may be appointed to the posts shown against each.

.....

3. Dr. B.B. Sinha,

Assoc Prof. of Medicine.

.....

Nalanda Medical College.

4. Dr. V.K. Srivastava Assoc. Prof of Surgery.

.....

Nalanda Medical College,

.....

Yours faithfully, Sd/- U.B. Krishnan

Dr. B. Mukhopadhyaya,

MCH, F.R.C.S., F. MAHS

Saidpur Road,

Patna-800004.

Annexure-12 of C.W.J.C. no. 5303 of 1985 :

No. MCI-12 (1) 6/77-Med./25311 dated New Delhi-110002. 2.1.1978/11.1.1978.

Subject: Teachers Eligibility qualifications--appointment of Teachers in Nalanda & Magadh Medical College.

Sir,

With reference to your letter no. 1013, dated the 1st Dec. 1977 on the subject noted above and in supersession of all previous letters from this office in this regard, I am to state that the matter regarding appointment of following doctors was considered by the Executive Committee of this council at its meeting held in 13th Dec. 1977 and I am directed to state that the following are eligible for the posts mentioned against their names :

1. Dr. Mahendra Narain

...

Associate Prof. of Medicine.

....

4. Dr. V.K. Srivastava

...

Associate Prof. of Surgery.

...

Yours faithfully, Sd/- U.B. Krishnan.

There has been successive inspection by the Medical Council of India of the Colleges for renewal of recognition and all such reports were sent to the Bihar Government which was duly accepted by it without any murmur (See Annexures-12,14,28 and 29 of C.W.J.C. no. 5147 of 1985 and Annexure-7 of C.W.J.C. no. 5303 of 1985). In all these reports the petitioners were shown as Associate Professors. The recognition was granted to the Medical Colleges and/or renewed on the basis of these reports. Central Government approved the recommendation of Medical Council of India for the temporary approval of Nalanda Medical College for the period up to 30.4.1980 and the M.B.B.S. degree awarded by the University to which this College is affiliated, got included in the first schedule of Medical Council Act with a direction that any shortcoming and deficiency pointed out by the Inspectors of the Council in their inspection report before 30.4.1980 should be rectified (See Annexure-15 of C.W.J.C. no. 5303 of 1985). The step taken by the Board in my opinion, by appointing the petitioners as Associate Professors after taking clearance from the Medical Council of India, was for the purpose of efficient management of the College. The State also, after

nationalization, kept on taking work from the petitioners as Associate Professors, treated them as Associate Professors and enjoyed the recognition of the Institutions projecting the petitioners as Associate Professors to the Medical Council of India. Question is, can the State now turn round and question the appointments and/or Promotions as invalid in view of the letter dated 2.8.1977 ? The petitioners have contended that Annexure-E is not an order of the Government as it has not been authenticated in the manner prescribed by the Rules of Executive Business. Further, it cannot be held to be a direction within the meaning of section 4 (2) of the Ordinance for efficient management of the College. Section 4 (2) of the Ordinance refers only to the control of the State Government. This section is again subject to section 16 of the Ordinance which empowers the State Government to give direction for proper management of the College and in the event of breach of direction by the Board of Control, the State Government is further empowered to remove the Board of Control. It was also submitted that the stand taken in C.W.J.C. no. 4554 and 5004 of 1978 which arose consequent upon take over of private Medical Colleges challenging the vires of section 6 (2) and section 6 (3) of the Take Over Act is contrary to the present posture of the State.

25 I find a supplementary affidavit filed in C.W.J.C. no. 4554 of 1978 for vacating the order of stay restraining appointment and promotion in the Medical Colleges, State Government stated that all existing teachers of the erstwhile private Medical Colleges would be certainly considered if they are fulfilling the requirement of the Medical Council of India of minimum academic qualification and teaching experience for the highest post as far as practicable (See Annexure-18 of C.W.J.C. no. 5147 of 1985). In the order passed in the said writ petitions on 27.11.1979 it was consented by the State that they would alter the terms and conditions and terminate the services of the teaching staff if their selections were not in accordance with the University Regulation and on the basis of the Guideline laid down by the Medical Council of India (Annexure-19 of C.W.J.C. no. 5147 of 1985). Here in these writ petitions the State, in spite of the stand taken earlier and having suffered a consent judgment, contend that no promotion will be deemed to be legal which did not have prior approval of the State Government as required by Annexure-E. It is now too late in the day for the State Government to get rid of the appointments by relying upon its decision of prior approval, having reaped the benefit of the promotions in obtaining recognition of the Medical Colleges by the Medical Council of India; having not objected or murmured to the promotions at any stage in spite of the various inspection reports made by the Medical Council of India from time to time for continued recognition of the Medical Colleges and/or extension thereof by forwarding the copies of the inspection reports to the State Government showing the petitioners as Associate Professors; having further given a clear consent when the Take Over Act itself was under challenge in C.W.J.C. no. 5147 of 1985 that the Government will absorb all the teachers engaged in the Medical Colleges to the highest post if they are found fit as per the requirement of the Medical

Council of India Guideline; having not dissolved the Board of Control for violation of the direction (Annexure-E) issued u/s 16 of the Ordinance which the State Government was so empowered. The very conduct of the State, in the facts and circumstances of the case, in my opinion, would amount to implied approval of the petitioners' appointment and /or promotion made by the Board of Control, as Associate Professors.

26 It is well established that under certain conditions silence or inaction constitute a representation as much as positive language or conduct for the purpose of Estoppel (See Spencer Bower and Turner, the Law relating to Estoppel by representation, page 48). It was the legal duty of the State to take steps or to disclose to the Medical Council of India or to the petitioners that these promotion have not their approval and, therefore, invalid. On the other basis, the State by their conduct by reaping the benefit of such promotion, led everybody to believe that no such fact exists or that there is nothing so abnormal or peculiar in the nature of the transaction or in the circumstances of the case as to give rise to any duty of disclosure and to shape Medical Council's course of action on that assumption. In my opinion, the State's silence, inaction for years and their stand taken in the earlier writ petition amounts to an implied representation of the non-existence of any thing of the kind; on the basis whereof every represented altered their position on the faith of that representation. Therefore, the State is now estopped setting up the existence of such surprised or undisclosed facts. In any event it would amount to acquiescence and waiver of the requirement of prior approval in the matter of appointment and promotion and/or implied approval of the State to the appointment and promotion.

27 There is one more reason for me to hold that the promotions had the approval of State Government. For the purpose of efficient management of the College, which was the function of the Board of Control, they had the impending duty of obtaining recognition and for the said purpose appointments and promotions were urgently required and in their wisdom, after obtaining the opinion of the Medical Council of India, they promoted the existing teachers. If that was a breach of the direction of the State Government, as envisaged by Annexure-E, the State Government was empowered to dissolve the Board of Control in exercise of power conferred u/s 16 of the Ordinance. But the State Government did not do so evidently as it was "for the proper management of the College". The words "control for the State Government" u/s 4 (2) of the Ordinance do not mean that every action of the Board for the efficient management of the College had to have State Government's seal and stamps. In that event the State Government will be usurping the power of management by the Board of Control constituted u/s 3 of the Ordinance to exercise all the powers of the Managing Committee of the College. The State exercised only supervisory jurisdiction to over see efficient and proper management. I am also of the opinion that u/s 16 the State Government could give such direction to the Board which was meant for proper management of the College. Even if it is assumed that the direction contained in Annexure-E was by the State Government, it was

not insisted upon by the State as it was likely to affect the proper management of the College when the latter was passing through crucial stages with the career of hundred of students to obtain immediate recognition and to meet the requirement of Medical Council of India. The appointments however had the prior approval of the Medical Council of India of which the State had full knowledge. It was, therefore, the State did not take any action u/s 16 of the Ordinance which can safely be assumed to be State's tacit approval of action taken by the Board in the best interest of the College. I hold that the appointments and promotions of the petitioners cannot be held to be illegal because it was violative of Annexure-E, the letter of the Joint Director of the Health Department.

28 I now take up the submission whether the State Government was at all justified in issuing Annexures-22 and 27 (C.W.J.C. no. 5147 of 1985), Annexures-7 and 14 (C.W.J.C. no. 5205 of 1985) and Annexures-10 and 10 (1) (C.W.J.C. no. 5303 of 1985) upon the tentative decisions of the Screening Committee (Annexure-20 of C.W.J.C. no. 5547 of 1985). Could these orders to the detriment of the petitioners at all be passed before finally determining the eligibility of all the candidates ? Whether such a decision of the State Government is ultra vires Articles 14 and 16 of the Constitution of India and section 6 of the Take Over Act as interpreted by the previous judgment of the High Court (C.W.J.C. no. 5004 of 1978 decided on 27th November, 1979) where it was held that the decision of the Government u/s 6 (3) is subservient to the decision of the Screening Committee u/s 6 (2) of the Take Over Act. The judgment lay down in no unclear terms "In other words it is conceded that sub-section (3) of section 6 of the Take over Act is being controlled by sub-section (2) of section 6 of the Act". Question, therefore, is unless the decision of the Screening Committee u/s 6 (2) of the Take Over Act attains finality could the State Government take any decision u/s 6 (6) of the Take Over Act. At this place it would be worthwhile to extract the previous consent judgment of this Court, even though repetitive, to properly appreciate the point.

It is also conceded by both the counsel that the State Government can alter the terms and conditions and terminate the services of the teaching staff, provided their selection was not in accordance with the University Regulation and on the basis of the guidelines laid down by the Medical Council of India. In other words, it is conceded that sub-section (3) of section 6 of the Act is being controlled by sub-section (2) of section 6 of the Act. Thus, the State Government under sub-section (3) can terminate the services of any of the teaching staff only if the appointment of the teaching staff was not made in accordance with the University Regulation and on the basis of the guide-lines laid down by the Medical Council of India and not otherwise. If these two conditions are fulfilled then the State Government has authority to terminate the services of any of the teaching staff. In other words, these petitioners will not be placed before the second screening committee or the second Selection Board for their appointment.

We, therefore, direct that these petitioners should be promoted according to their

claims, if any, subject to the direction of the State Government. The respondents are further directed to follow in all other identical cases of the teaching staff of all the private medical colleges which have been taken over by the State Government.

(C.W.J.C. no. 5004 & 4554 of 1978 decided on 27.11.1979).

29 The Screening Committee was unable to decide about the claim of teaching experience outside India except Wels National Medical School Hospital Cardiff, University of Cardiff. Teaching experience gained in other types of hospital and Institutions abroad, they felt reference has to be made to the Medical Council in Annexure-2 of the Committees report list of such teachers, whose case has been referred to Medical Council, have been stated (See pages 30 and 39 of the report of the Screening Committee; Booklet published by the Health Department; Annexure-20). In the case of Dr. V.K. Srivastava and Dr. Mahendra Narain, they found them eligible as Assistant Professor of Surgery and Medicine since February and June, 1978, respectively but postponed deciding validity of their appointment as Associate Professor till advice is received from Medical Council of India regarding their experience abroad. In the case of Dr. B.B. Sinha, they found him eligible as Assistant Professor, Medicine since July, 1978 but his claim of teaching experience in Kurji hospital and R.M.R. I as well was referred to Medical Council of India for advice. Therefore, the Screening Committee could not decide the case of these three doctors. From the earlier judgment it is crystal clear that any decision of the State Government u/s 6 (3) of the Act must abide by the decision of the Screening Committee and the State Government cannot act in exercise of its power u/s 6 (3) of the Take Over Act, as a second screening committee for the purpose of absorption, termination and re-determination of the rank of the doctors.

30 No material has been placed before me by the State Government whether after March, 1980, the State Government has obtained the opinion of the Medical Council of India as directed by the Screening Committee in their meeting held on 14.3.1980 and 15.3.1980. The very first page of the minute of the Screening Committee states as follows :

Considered the Resolution of the Government along with the judgment of Patna High Court in C.W.J. Cs. no. 5004 and 4554 of 1978 and noted that in view of the clear directive contained in the High Court judgment the Committee would be well advised to base their recommendation on the Medical Council of India Regulation and the University Regulation if there be any. The Committee, therefore, decided to screen the teachers on the basis of 1971 Regulations of the Medical Council of India, approved u/s 33 of the Medical Council of India Act, 1956.

I really wonder how in this state of affairs the Government could at all prepare a final panel of Professors, Assistant Professors and Associate Professors and accord promotion to others as Professors, ignoring the consideration of the

petitioners without obtaining the views of the Medical Council of India as desired by the Screening Committee as also in view of previous directive of the Patna High Court. The Government had no authority to determine the teaching experience of these doctors in India and abroad in determining their fulfilment of the qualification as laid down by the Medical Council of India for being appointed as an Associate Professor and/or Professor. The Screening Committee was also directed by the High Court to act strictly according to the guideline of the Medical Council of India and University Regulation, if available. Admittedly, there being no University Regulation the Screening Committee was required to screen the teachers only on the basis of the guideline of the Medical Council of India. The preparation of a panel of Professors without finalising the panel of Associate Professors wherefrom the promotion is effected is bound to occasion, inequality in the matter of appointment and promotion. It also suffers from the vice of irrationality and arbitrariness, devoid of fair play and justice. I am, therefore, constrained to hold that seniority list showing petitioners as Assistant Professor of Medicine and Surgery (Annexure-7 of C.W.J.C. no. 5205 of 1985; Annexure-27 of C.W.J.C. no. 5147 of 1985 and Annexure-10/1 of C.W.J.C. no. 5303 of 1985) before obtaining the opinion of Medical Council of India is not in accordance with law. The inclusion of their name in the said list therefore, has to be quashed. The promotion of respondents as Professors (Annexure-8 of C.W.J.C. no. 5205 of 1985) and the letter asking for preference regarding posting as Professor (Annexure-22 of C.W.J.C. no. 5147 of 1985 and Annexure-10 of C.W.J.C. no. 5303; of 1985) before finalisation of the cases of the petitioners do not appear to be legal and valid since the petitioners were excluded from consideration. Had the petitioners been justly appointed as Associate Professors fulfilling the norm as required in C.W.J.C. no. 5004 of 1978 decided on 27.11.1979 they became entitled to be promoted as Professors. As a matter of fact, some petitioners claim to be the senior most Associate Professor, in their discipline.

31 Further, the State Government had before it the materials to show that the appointment of the petitioners were made after the Medical Council of India found them fit and duly qualified with required teaching experience to be appointed as Associate Professor (See Annexure-12 of C.W.J.C. No. 5147 of 1985, Annexures 9 and 12 of C.W.J.C. no. 5205 of 1985 and Annexure-7 of C.W.J.C. no. 5303 of 1985). It had also before it the opinion of the Medical Council of India in the form of their inspection reports dated 7.4.1981 and December, 1981 (Annexures-28 and 29 of C.W.J.C. 5147 of 1985) even after the report of the Screening Committee dated 15.4.1980 (Annexure-20 of C.W.J.C. no. 5147 of 1985). As such the State Government if at all wanted to exercise their power u/s 6 (3) of the Take Over Act due to some urgency and/ or due to exigencies of the situation it could have acted on the basis of those materials without calling for further advice of the Medical Council of India to avoid duplication of work, which would have been in consonance with the earlier judgment of this Court and the requirement of section 6 of the Take Over Act.

32 For that matter, I can not really appreciate even the Screening Committee's

directive to obtain again the opinion of the Medical Council of India as to the teaching experience of these petitioners abroad and in India. Be that as it may, the State Government had before it the various representations of the petitioners (See Annexure-21 of C.W.J.C. no. 5147 of 1985; Annexure-6 of C.W.J. Cs. no. 5303 and 5205 of I 85) bringing it to its knowledge every fact leading to their appointment as Associate Professor, as also the subsequent reports of the Medical Council of India after the submission of the report of the Screening Committee, which ought to have persuaded it to treat them as validly appointed Associate Professor and considered their case along with others for promotion to higher post. In the alternative awaited the receipt of further opinion of the Medical Council of India as per Screening Committee's directive.

I do not think, the State ever realised the grievous and disastrous consequences of its stand that the petitioners were not qualified to be appointed as Associate Professor and/or validly appointed as Associate Professor. Inevitable consequence would be the recognition obtained from Medical Council of India and the Central Government was by misrepresentation of facts and resort to deception and all degrees and diplomas conferred so long are scrap of papers. I have not been able to fathom this dual policy of the State nor can this policy be justified on any moral or legal ground. It may also be mentioned, in this connection, that Medical Council of India also possess the power of relaxation of requisite experience on a reference made to the Council as envisaged under Clause 9 of 1971 Regulation (last page) and clause 10 of 1974 Guideline on consideration of Individual Merit.

33 I would like to dispose of one more point seriously urged before me by the State to the effect that in any event the petitioners were only temporarily designated as Associate Professor (Vide Annexure-C), therefore the experience gained by them as Associate Professor will not be equivalent or at par with those who were permanently appointed as Associate Professor may at all for consideration of their further promotion as Professors. This argument is also devoid of substance in view of the law laid down by the Supreme Court in the case of Dr. Asim Kumar Bose vs. Union of India (A.I.R. 1983 Supreme Court 509) has been held that:

There is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as specialist in a teaching hospital with the ex-officio designation.

The ratio in my opinion, is actual gaining of teaching experience in a recognized teaching Institution have to be reckoned for the purposes of eligibility to be considered for appointment or promotion as the case may be in a Medical Institution.

34 One more question has been strenuously urged before me is that the Screening Committee adopted wrong legal test by trying to screen the teachers on the basis of 1971 Regulation. It was submitted by the learned counsel that the earlier judgment of the High Court referred to the Guideline of the Medical

Council of India for determination of the eligibility and right of promotion of teachers. The Medical Council of India at the time of appointment also applied the Guideline of 1974. The resolution of the State Government dated 23rd November, 1976, Annexure-B, in which the qualification has been stated is in effect the adoption of the teaching experience as has been prescribed in the revised Regulation of 1974. This was also the stand of the State as to the teaching experience for the post of Associate Professor in the supplementary affidavit filed in the previous case (C.W.J. Cs no. 5004 and 4554 of 1978, Annexure-18). This stand of the State Government is also manifest from paragraph no- 11 of the Counter-affidavit filed on behalf of the State.

35 On behalf of the private respondents it has been urged that the test to be applied is the 1970 Regulation of the Medical Council of India because this is the regulation purported to have been approved u/s 33 of the Medical Council of India Act, 1956 by the Government of India on 5th June, 1971 but the revised recommendation of the Medical Council of India of the year 1974 do not seem to have been approved by the Government of India under section. 33 of the Medical Council Act because 1974 revised Regulation do not purport to say so. It is, therefore, said that under the Medical Council Act, 1956, the revised recommendation of 1974 cannot be adopted to determine the required qualification and teaching experience of the teachers appointed in a recognized Medical Institution.

36 The revised recommendation of the Medical Council of India on the qualifications required for appointment of the persons to the post of teachers has been approved by the Council at its meeting held on 16.3.1974 after complying with the procedure as laid down u/s 19A of the Indian Medical Council Act, 1956. Section 19A authorizes the Council to prescribe the minimum standard of medical education required for granting recognized Medical qualifications by the Universities and Medical Institutions in India. It further requires that the draft Regulation and all subsequent amendment thereof should be furnished to the State Government for their comments and on consideration of the comments received within three months from the date of furnishing the Draft Regulation, the proposed Regulation should be placed before Central Government for sanction. The revised recommendation states at the very first page of the booklet, that the requirements of Section 19A has been complied with. What is being argued by the private respondents that the power to make regulation is u/s 33 of the Medical Council Act and there being no reference of section 33 in the revised Recommendation of 1974, therefore revised recommendation never attained the status of Regulation.

37 Section 19A has been inserted on 16.6.1964 by amending Act 24 of 1964. Section 19-A vests the Medical Council with the power to prescribe the standards of medical education. It further provides the mode and manner of framing Regulation, in this connection, and when to obtain the sanction of Central Government to the proposed Regulation for its finality. Section 19-A also

empowers amendment of the existing Regulation. It is true that the power to make Regulation by the Council is to be found u/s 33 of the Medical Council Act. It requires making of Regulation only with the previous sanction of the Central Government. Both the sanctions speak about sanction of the Central Government to the proposed Regulation. If, therefore, the revised recommendation of 1974 has obtained finality on fulfilment of all the requisite conditions u/s 19-A, it becomes statutorily enforceable. The revised recommendation of 1974 says in so many words at the very outset that the recommendations have been approved after complying with the procedure laid down u/s 19-A of the Indian Medical Council Act. At page 3 of the revised recommendation, the 1974 document is referred to as "PRESENT REGULATION" and "PRESENT REQUIREMENT".

38 My attention has been drawn to a division Bench decision in the case of *Rama Shanker Singh vs. The Principal, Darbhanga College* (A.I.R. 1969 Patna 11) in this connection. In that case it was held in paragraph no. 6 of the judgment: "if the recommendation has not been finalised as required u/s 11A" they will have only advisory value nevertheless requiring great value to be attached. By finality their lordship meant compliance of section 19A (2) which makes it statutory Regulation. In *Rama Shanker* case (*supra*) the Regulation of November, 1964 was under consideration of the Central Government for inclusion under Regulation.

Therefore, merely because there is no reference of section 33 of the Indian Medical Council Act in the revised recommendation of 1974 from that itself, it is not possible to conclude that the recommendations did not comply with all the requirements of 19A when it purports to have been so complied and referred to as present Regulation. No evidence in the nature of any letter or telegram and/or any certificate of the Council has been produced by the Private respondents, as was done in *Rama Shanker's* case (*supra*) in rebuttal of the averments inscribed in the very first and third page of Revised Recommendations of 1974.

39. Medical Council of India is not a party to the writ petitions and, therefore, I have no opportunity to know their stand in this regard. The materials available on the record, however, manifest that the Medical Council of India is following the staffing pattern as envisaged under the revised recommendation of the year 1974. The State of Bihar has also prescribed the same standard of qualification for appointment of person to the various posts of teachers in the Resolution, Annexure-B, in the year 1976. The State, in their supplementary-affidavit in the earlier writ petition, has adopted the qualification requirement as it is to be found in the revised Regulation of 1974 (Annexure-18). The revised recommendation also purports to have been made as required u/s 19A of the Indian Medical Council Act. Section 6 (2) of the Take Over Act refers to University Regulations and the Guidelines laid down by the Medical Council of India for the purpose of screening the candidates as to their appointment and promotion. The previous judgment also refers to Guidelines laid down by the Medical Council of India. The minutes of the Screening Committee do not anywhere show that they obtained

the opinion of the Medical Council of India as to whether the revised recommendation of 1974 received the sanction of the Central Government. What is discernible from the minute of the Screening Committee is that the screening have to be made on the line suggested by the High Court's judgment in C.W.J. Cs no. 5004 and 4554 of 1978. The Committee, therefore, decided to screen the teachers on the basis of the 1971 Regulation of the Medical Council of India approved u/s 33 of the Medical Council of India Act, 1956. If the 1974 revised recommendation has attained finality as required u/s 19A that alone would be the test for screening the qualification for appointment of the persons to the post of teachers and not 1971 Regulation.

40. Be that as it may, section 6 of the Take Over Act, 1957, mandates the Screening Committee to scan the qualification and experience of the teachers as per University Regulation and Medical Council Guideline and the previous judgment, to which the State and petitioners were parties, directed the Government to get the teachers tested as to their qualification and experience as per Medical Council Guideline, the Medical Council also is obtaining the staffing pattern as laid down in their Revised recommendation, 1974, enforced and implemented and on that basis approved the appointment of petitioners as Associate Professor. The State also, in its turn, adopted the said qualification and teaching experience in its Resolution passed in the year 1976 (Annexure-B) and reiterate the same in their earlier supplementary affidavit paragraph no. 3 (Annexure-18 of C.W.J.C. no. 5147 of 1985) and following the Guideline, the staffing pattern recommended by Medical Council of India, was adhered to and thus obtained the approval of the Central Government in extending recognition to this Institution (See Annexure-15 of C.W.J.C. no. 5303 of 1985) on 8.5.1979 in the following words :--

I am directed to convey the approval of the Central Government to the recommendation of the Medical Council of India for the temporary approval being given to the following medical colleges up to 30th April, 1980.

Item no. 8-Nalanda Medical College.

I, therefore, hold that the Screening Committee under the order of the Court dated 27.11.1979 in C.W.J.C. no. 5004 of 1978 which was also founded upon the State's supplementary affidavit in the said case, ought to have proceeded to scan the teaching experience of the petitioners on the basis of Revised recommendation of 1974. This also appears to be dictate of section 6 of the Take Over Act since it refers to University Regulation in keeping with the Guideline laid down by Medical Council of India. Approval of the Central Government in the matter of Staffing pattern as laid down under Revised recommendation of 1974, finds statutory force to the said Guideline of 1974.

41. Mr. Tara Kant Jha, learned counsel appearing for some of the respondents, contended that the Medical Council of India prescribed only minimum standards and it does not seem that object and purpose of the Indian Medical Council Act is

to prohibit the Institutions in India from laying down standards higher or more stringent than the minimum standard prescribed by the Medical Council. He has, in this connection, relied upon a decision in the case of Kumari Darshan Ahuja vs. Agra University (A.I.R. 1982 Allahabad 359).

42. Similar was the argument of Mr. S.B.N. Singh learned counsel while appearing for some of the respondents. Both the learned counsels further drew my attention to the case of Dr. Hari Ram Singh vs. State of Bihar and Others [1983 Patna law Journal Report (N.O.C.) 9.]

The case of Kumari Darshan Ahuja (supra) relates to failure of the petitioners in the clinical examinations of Ophthalmology and E.N.T. in obtaining the final M.B.B.S. degree held by the Agra University. In the said case even though under the Regulation of the Indian Medical Council Act there is no requirement that the candidate should obtain fifty per cent marks in the clinical examination of Ophthalmology and E.N.T. the Agra University made obligatory for all candidates to secure fifty per cent marks in all the clinical examination including Ophthalmology and E.N.T. It was held in that case that the Ordinance is not ultra vires because the Indian Medical Council Act control the minimum standards of medical education and to regulate their observance. University can always prescribe a little higher standard than that laid down by the Medical Council of India. It does not, therefore, with a slight test degree, run counter either to the letter or spirit of minimum standard laid down by the Medical Council of India in its Regulation. This case is clearly distinguishable. I am concerned in this case as to the eligibility of the petitioners being appointed as Associate Professor and further being considered along with other eligible candidates for promotion as a Professor. The State now here says in their counter-affidavit that they have laid higher qualification for eligibility for being appointed as Associate Professor and/or for being considered for promotion as Professors. On the contrary, they adopted the same eligibility test as has been recommended by the Medical Council of India. This case is, therefore, of no help to the respondents. The case of Hari Ram Singh (supra) only lays down that if any Regulation framed by the Indian Medical Council without the approval of the Central Government it will not attain the status of a Regulation. There could be no two opinion about the same.

43. The plea of the Government raised on the basis of Annexure-E that the temporary designation of the petitioners as Associate Professor as the said designation was accorded without prior approval of the State Government (Annexure-E) is rejected and over ruled for reasons already indicated earlier.

44. Two courses are left to Court in view of the finding recorded in the preceding paragraphs in order to grant relief to the petitioners: One is to refer the case of the petitioners to the Screening Committee; and the other to hold the petitioners' appointment as Associate Professors validly made by the Board of Control. In adopting the first course, I find the Screening Committee constituted u/s 2 (E) of the Act is only required to determine whether the appointment of the petitioners was made in accordance with "the University Regulation and in

keeping with the guidelines laid down by the Medical Council of India, as per judgment in C.W.J.C. no. 5004 and 4554 of 1978 dated 27.11.1979. The Committee is not left with any discretion to form its own assessment of the merit and suitability of the teacher of the Colleges that have been taken over. No discretion of the Committee will come into play during the whole process. Further, the Committee was constituted on 19.9.1978; it took about a year and half to submit its report. A new Screening Committee may have to be reconstituted as some of the members may not be available for one reason or the other. The petitioners or at least some of them have been deprived of what is their legitimate due for a sufficiently long time. To permit the matter to hang on, as it must, if the matter is to be re-referred to the Screening Committee; in my opinion, would not be in the interest of justice and expeditious resolution of long standing controversy.

As far as the second course is concerned, I find the Medical Council of India have already rendered their opinion as to the eligibility of the petitioners for being appointed as Associate Professors after examining their biodata including teaching experience, whose advice is re-sought by the Screening Committee without assigning any reason. The only discernible reason is that the Committee is unable to form their opinion as to their experience. The inspection report of the Medical Council of India, both before and particularly after the submission of the report of the Screening Committee appraising the petitioners' continuance as Associate Professor for continued recognition of the College by the Medical Council of India with the approval of the Central Government by being already there, it only goes to affirm Medical Council's opinion that the petitioners are validly appointed as per Medical Council Regulation. Admittedly, there is no University Regulation in this connection apart from Medical Council Regulation. In short, the petitioners eligibility to hold the post of Associate Professors have already been determined by the Medical Council of India. The advice sought for by the Screening Committee in their report is already obtainable with the State Government. In my opinion, therefore, it would be sheer duplication of the work and an exercise in futility to the detriment of the petitioners. The second course appears to me to be more in consonance with justice and fair play. I, therefore, hold the petitioners' appointment as Associate Professor validly made and direct the Government to treat the petitioners to have been validly appointed as Associate Professors from the date they have been so designated and give all consequential benefit flowing therefrom. Any teaching experience gained as being temporarily designated on a particular post should also inure the benefit of the petitioners. The name of the petitioners from the panel of Assistant Professor is quashed. The respondent State is directed to consider the cases of the petitioners along with other eligible candidates if they have the requisite experience and qualification for being appointed as Professor as laid down by Medical Council guidelines for promotion as Professors. Any promotion made during the pendency of these writ petitions is subject to the direction contained herein. All action taken pertaining to the subject, by the respondent State should

be held only, to be tentative conferring no final right to the beneficiaries. The undertaking given by the respondent-State in their supplementary affidavit in C.W.J.C. no. 5004 of 1978 for vacating stay to the effect "that all the existing teachers of the Private Medical College would be certainly considered as far as practicable to be absorbed in the highest post they are found fit" is directed to be given effect to fully. In the result, the writ petitions are allowed. A writ of mandamus is issued directing the respondent State to give effect to the directions contained in paragraphs no. 44 and 45 of the judgment expeditiously. There shall be no order as to costs.