(2014) 09 GAU CK 0050

In the Gauhati High Court

Case No : W.P.(C) No. 3242 of 2014

Rumelaktar Tapadar — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:
Constitution of India, 1950 — Article 16, 246, 254, 254(1), 254(2)
Indian Medical Council Act, 1956 — Section 33

Citation : (2015) 1 GLT 29

Hon'ble Judges : K. Sreedhar Rao, Acting C.J.;Arup Kumar Goswami, J

Bench : Division Bench

Advocate : K.N. Choudhury, S.K. Talukdar, A.K. Baruah and J.M.A. Choudhury, Advocates for the Appellant; D. Saikia, Addl. Advocate General, Advocates for the Respondent

Judgement

K. Sreedhar Rao, Actg. C.J.

1. The Indian Medical Council has formulated the Regulations on Graduate Medical Education, 1997. The Regulation 4 in Chapter-II prescribes the following eligibility criteria for admission into medical courses:

"4. Admission to the Medical Course - Eligibility Criteria:

No Candidates shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

1. He/She shall complete the age of 17 years on or before 31st December, of the year admission to the MBBS course. (1. Substituted vide notification dated 29.05.1999)

2. He/She has passed qualifying examination as under:-

a. The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of physics,

Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than core course of English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

Note: Where the course content is not as prescribed for 10+2 education structure of the National Committee, the candidates will have to undergo a period of one year pre-professional training before admission to the Medical colleges;

Or

b. The intermediate examination in science of an Indian University/Board or other recognized examining body with Physics, Chemistry and Biology which shall include a practical test in these subjects and also English as a compulsory subject.

Or

c. The pre-professional/pre-medical examination with Physics, Chemistry and Biology, after passing either the higher secondary school examination, or the pre-university so an equivalent Examination. The pre-professional/pre-medical examination shall include a practical test in Physics, Chemistry and Biology and also English as a compulsory subject.

Or

d. The first year of the three years degree course of a recognized university, with Physics, chemistry and Biology including a practical test in three subjects provided the examination is a "University Examination" and candidate has passed 10+2 with English at a level not less man a core course.

Or

e. B.Sc. examination of an Indian University, provided that he/she has passed the B.Sc. examination with not less than two of the following subjects Physics, Chemistry, Biology (Botany, Zoology) and further that he/she has passed the earlier qualifying examination with the following subjects - Physics, Chemistry, Biology and English.

Or

Any other examination which, in scope and standard is found to be equivalent to the intermediate science examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical test in each of these subjects and English."

The Supreme Court, in Medical Council of India Vs. State of Karnataka and Others, , has laid down some guidelines and the said guidelines have statutory force. The Government of Assam has issued a notification, dated 25-04-2007,

bringing into effect the Medical Colleges of Assam, Regional Dental College, Guwahati and Government Ayurvedic College, Guwahati (Regulation of Admission of Under-Graduate Students) Rules, 2007 (in short, ''2007 Rules''), incorporating additional conditions/qualifications for the eligibility of admission in medical courses. Rule 3(6) of the 2007 Rules, which is the bone of contention in this case, reads as follows:

"3(6) Candidate''s age should not be below 17 years and above 24 years of age on the 31st day of December of the year in which the admission is sought for:

Provided that the maximum age limit is relaxable by 3 years in case of candidates belonging to the Schedule Castes or Scheduled Tribes, OBC and MOBC."

2. The petitioner tantalizingly has missed the admission on account of the cut off bench mark of the age for admission. The 2007 Rules mandates that for admission to medical course, a candidate should not be below 17 years and above 24 years of age as on 31st December of the year of admission to the MBBS course. The petitioner is marginally six months'' over aged to fulfill the age criteria.

3. It is the contention of the petitioner that the above State Rules, which fixed the outer age limit for admission is in conflict with, and repugnant to, the Regulation 4 framed by the Indian Medical Council. Therefore, the said Rules, to that extent, is ultra virus.

4. The petitioner has put forth the following contentions in support of the case:

"(i) The Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions falls under Entry 66 of List I - Union List of Seventh Schedule; therefore, the Union has got exclusive domain to legislate.

(ii) The Entry 25 of the List Ill-Concurrent List, which reads as follows:

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

The items covered by Entries 64 and 65 of List-I are professional, vocational or technical training, including the training of officers or the promotion of special studies or research or scientific or technical assistance are all excepted from the purview of the legislative competence of the State and the State has power to legislate except in accordance with Article 254 of the Constitution of India.

(iii) The State, Government, while framing the 2007 Rules, has not complied with the requirement of seeking Presidential assent as required under Article 254 of the Constitution of India. Since there is repugnancy between the State Rules and the Regulations framed by the Indian Medical Counsel, the Regulations of the Indian Medical Council have to prevail in law.

(iv) The upper age limit prescribed by the State is irrational and not based on any scientific methods merely because a candidate, who is competently otherwise eligible, is disqualified merely because she is over aged by six months, would be highly inequitable. It is, therefore, that the Court, in its discretion, can relax and permit the admission in the cases where the facts and equity permit."

5. Per contra, Mr. D. Saikia, Additional Advocate General, Assam, submitted that-

(i) the State, in exercise of its legislative powers under Entry 25 of Concurrent List, is fully competent to legislate and prescribe the outer age limit, such prescription does not amount to repugnancy, nor in conflict with the legislative power of the Union.

(ii) The Regulations of Indian Medical Council fixes only the minimum age limit, the upper age limit is kept open and unoccupied; therefore, the State in its legislative competence can prescribe the outer age limit.

(iii) It is submitted that if the outer age limit is not prescribed, it would lead to opening of the Pandora Box and persons of any age may try to seek admission, thereby curtailing the opportunity for the young and eligible students to pursue the education in the medical field to cater the needs of health services of the society.

(iv) The State Government has the reason for stipulating the outer age limit keeping in view the State Health Policy. A student, who seeks admission at the outer age limit of 24 years, completes his medical education within 5 1/2 years. Thereafter he has to undergo compulsory 1 year rural health service in lieu of 5 years service in urban areas and, then, he is permitted to pursue post-graduation, which will be for a period of 3 years and thereafter, he is to serve the State Government for 10 years. Keeping in view the period to be spent for education and service, the outer age limit has been fixed in a most scientific and on a rational manner, there is no arbitrariness in fixing the outer age limit by the State Government.

(v) The outer age limit for seeking employment in State Service in medical field is 38 years; therefore, in the scheme, period of education, service in rural area and in urban areas, the post-graduate opportunity are all taken into consideration to see that a medical graduate at proper age is able to complete his course and seek employment to render health service to the society.

6. Mr. K.N. Choudhury, Senior counsel has relied upon the decision of the Supreme Court in the case of Deep Chand Vs. The State of Uttar Pradesh and Others, , to illustrate the doctrine of repugnancy. The pertinent observations made in the said judgment are at paragraph 28, which is reproduced hereunder:

"28. Nicholas in his Australian Constitution, 2nd Edition, page 303, refers to three tests of inconsistency or repugnancy:-

"(1) There may be inconsistency in the actual terms of the competing statutes;

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court is intended to be a complete exhaustive code; and

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter."

This Court in Ch. Tika Ramji v. The State of Uttar Pradesh (1) accepted the said three rules, among others, as useful guides to test the question of repugnancy. In Zaverbhai Amaidas v. The State of Bombay (2), this Court laid down a similar test. At page 807, it is stated: "The principle embodied in section 107(2) and Article 254(2) is that when there is legislation covering the same ground both by the centre and by the Province, both of them being competent to enact the same, the law of the Centre should prevail over that of the State."

Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:

(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

7. A comparative analysis of the provisions of the Motor Vehicles (Amendment) Act, 1956 vis-?-vis the provisions of the Uttar Pradesh Transport Service (Development) Act, 1955, have been made in paragraph 30 of Deep Chand case (supra). Paragraph 30 is, therefore, reproduced hereunder:

"30. A comparison of the aforesaid provisions of the U.P. Act and the Amending Act indicates that both the Acts are intended to operate, in respect of the same subject matter in the same field. The unamended Motor Vehicles Act of 1939 did not make any provision for the nationalization of transport services, but the States introduced amendments to implement the scheme of nationalization of road transport. Presumably, Parliament with a view to introduce a uniform law throughout the country avoiding defects found in practice passed the Amending Act inserting Chapter IV-A in the Motor Vehicles Act, 1939. This object would be frustrated if the argument that both the U.P. Act and the Amending Act should co-exist in respect of schemes to be framed after the Amending Act, is accepted. Further the authority to initiate the scheme, the manner of doing it, the authority to hear the objections, the principles regarding payment of compensation under the two Acts differ in import ant details from one another. While in the U.P. Act the scheme is initiated by the State Government, in the Amendment Act, it is proposed by the State Transport Undertaking. The fact that a particular undertaking may be carried on by the State Government also cannot be a reason to equate the undertaking with the State Government; for under s. 68A the undertaking may be carried on not only by the State Government but by five

other different institutions. The undertaking is made a statutory authority under the Amending Act with a right to initiate the scheme and to be heard by the State Government in regard to objections filed by the persons affected by the scheme. While in the U.P. Act a Board hears the objections, under the Amending Act the State Government decides the disputes. The provisions of the scheme, the principles of compensation and the manner of its payment also differ in the two Acts. It is therefore manifest that the Amending Act occupies the same field in respect of the schemes initiated after the Amending Act and therefore to that extent the State Act must yield its place to the Central Act. But the same cannot be said of the schemes framed under the U.P. Act before the Amending Act came into force. Under Art. 254(1) "the law made by Parliament, whether passed before or after the law made by the Legislature of such State.... shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void."

8. It was held that the Uttar Pradesh Transport Service (Development) Act, 1955 is repugnant to the provisions of Motor Vehicles (Amendment) Act, 1956.

9. In the case of State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , the Supreme Court in paragraph 41 has culled out the gist of the ratio laid down by the Supreme Court reported in several decisions, which reads as follows:

"41. What emerges from the above discussion is as follows:

[i] The expression "coordination" used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make "coordination" either impossible or difficult. This power is absolute and unconditional and in the absence of any valid compelling reasons, it must be given its full effect according to its plain and express intention.

[ii] To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or to give effect to Entry 66 of the Union List, it would be void and inoperative.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is

repugnant to the law made by the Centre 162 under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally."

With reference to the observations made in paragraph 34 of Adhiyaman Educational & Research Institute case (supra), it is argued that it is impermissible for the State to fix the higher or additional qualification other than the basic qualification fixed by the Indian Medical Council.

"34. Shri Rao also contended that in practice, the prescription of higher standard by the State may not be in conflict with the standards laid down by the Council under the Central Act. To bring this home, he gave an illustration that where several institutions apply for starting technical institution and the State Government choose the one which has the best equipment, infrastructure and resources, compared to others who merely fulfill the minimum requirements laid down under the Central Act, it cannot be said that the preference given to the institution by the State Government was contrary to or inconsistent with the Central statute. Yet another illustration he gave was where the Central Act prescribes minimum marks for admission to a technical institution or minimum qualifications for the teaching staff, but among the applicants, there are enough number of students or teachers with higher mark or qualifications, respectively, than the minimum prescribed to compete for the limited number of seats. In such cases, when a technical institution selects those with more than minimum marks or qualifications, it cannot be said that there is non-compliance with the provisions of the Central Act. It is true that, in practice, it may happen that institutions with higher resources and students and teachers with higher marks and qualifications, respectively, than are prescribed apply and compete for the places, seats or vacancies as the case may be. However, it is equally true that when the vacancies are available for institutions or students or teachers as the case may be, the applicants cannot be denied the same on the ground that they do not fulfill the higher requirements laid down under the State Act, if they are qualified under the Central Act, Similarly, the institutions cannot be derecognized

or disaffiliated on the ground that they do not fulfill the higher requirements under the State Act although they fulfill the requirements under the Central Act. So also, when the power to recognise or derecognise an institution is given to a body created under the Central Act, it alone can exercise the power and on terms and conditions laid down in the Central Act. It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act."

10. The decision of Medical Council of India Vs. State of Karnataka and Others, , in paragraph 24 is reproduced hereinbelow:

"24. The Indian Medical Council Act is relatable to Entry 66 of List I (Union List). It prevails over any state enactment to the extent the State enactment is repugnant to the provision of the Act even though the State Acts may be relatable to Entries 25 or 26 of List III (Concurrent List). Regulations framed under Section 33 of the Medical Council Act with the previous sanctions of the Central Government are statutory. These regulations are framed to carry out the purposes of the Medical Council Act and for various purposes mentioned in Section 33. If a regulation falls within the purposes referred under Section 33 of the Medical Council At, it will have mandatory force. Regulations have been framed with reference to clauses (fa), (fb) and (fc) (which have been introduced by the Amendment Act of 1993 w.e.f. August 27, 1992) and clauses (j), (k) and (l) of Section 33."

In the above decision, the State modified the intake capacity to increase the number of admissions as against the quota fixed by the Indian Medical Council in the context of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, was held to be bad and repugnant.

11. The observations made in paragraph 36 of the decision of the Supreme Court in Dr Preeti Srivastava and Another Vs. State of M.P. and Others, , are referred to in support of the petitioner''s contention, which is reproduced below:

"36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution;

(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and

(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

12. In paragraphs 13 and 14 of the decision of the Supreme Court in Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, , following observations are made:

"13. The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is twofold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the examining body, to fix higher qualifications is recognized, the rules and regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State. It should be noted that the eligibility criteria fixed by the State and the University increased the standards only marginally, that is, 5% over the percentage fixed by AICTE. It cannot be said that the higher standards fixed by the State or University are abnormally high or unattainable by normal students, so as to require a downward revision, when there are unfilled seats. During the hearing it was mentioned that AICTE itself has revised the eligibility criteria. Be that as it may.

14. The respondents (colleges and the students) submitted that in that particular year (2007-2008) nearly 5000 engineering seats remained unfilled. They contended that whenever a large number of seats remained unfilled, on account of non-availability of adequate candidates, paras 41(v) and (vi) of Adhiyaman would come into play and automatically the lower minimum standards prescribed by AICTE alone would apply. This contention is liable to be rejected in view of the principles laid down in the Constitution Bench decision in Preeti Srivastava (Dr.)

and the decision of the larger Bench in S.V. Bratheep which explains the observations in Adhiyaman in the correct perspective. We summarise below the position, emerging from these decisions:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards laid down by the central body/AICTE. The term "adversely affect the standards" refers to lowering of the norms laid down by the central body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE, consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of Adhiyaman to the effect that where seats remain unfilled, the State authorities cannot deny admission to any student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of marks in the qualifying examinations."

13. In view of the ratio laid down by the said decision, it is strenuously argued by Mr. K.N. Choudhury, Senior counsel for the petitioner, that the purpose and intent of the Regulations framed by the Indian Medical Council do not contemplate or envisage any outer age limit for admission, only minimum age limit is fixed When such is the policy of the Regulations, it is impermissible for the State to incorporate the outer age cap for admission. The Regulations are framed in exercise of the legislative powers at Entry 66 of the List I. The State, if it has to exercise power under Entry 25 of List IE, necessary assent of the President should be obtained under Article 254 of the Constitution of India, in the absence, the said outer age limit, qualification, is per se repugnant to the provisions of the Medical Council Regulation and to that extent bad. The counsel also referred to

the decision of the Supreme Court in Adhiyaman Educational & Research Institute case (supra), wherein it has been held that the basic qualification prescribed by the Indian Medical Council have to be adhered to and State do not have power to increase or decrease the qualification, so prescribed by the Indian Medical Council and such modifications are held to be repugnant unless saved by Article 254.

14. Mr. D. Saikia, Additional Advocate General, for the State, relied upon the decision of the Supreme Court in Dr. Preeti Srivastava case (supra), in particular, referred to the observations of the Supreme Court in paragraph Nos. 35, 36, 39, 45, 46, 48 and 57. It is submitted that the decision rendered in Dr. Preeti Srivastava case (supra) is the judgment rendered by the Constitutional Bench and in the said decision, it has been clearly laid down that it is within the legislative competence of the State. Legislature, in exercising power under the Concurrent List to prescribed higher educational qualifications and higher marks for admission in addition to the one fixed by the Indian Medical Council in order to bring out the higher qualitative output from the students, who pursue medical course. The observations made in paragraph Nos. 35, 36, 39, 45, 46, 48 and 57 of Dr. Preeti Srivastava case (supra) are reproduced herein below:

"35. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

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

Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:

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

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of

the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution;

(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and

(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

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39. The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some

of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words - "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

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45. In Ambesh Kumar (Dr) v. Principal, L.L.R.M. Medical College a State order prescribed 55% as minimum marks for admission to postgraduate medical courses. The Court considered the question whether the State can impose qualifications in addition to those laid down by the Medical Council of India and the regulations framed by the Central Government. The Court said that any additional or further qualifications which the State may lay down would not be contrary to Entry 66 of List I since additional qualifications are not in conflict with the Central regulations but are designed to further the objective of the Central regulations which are to promote proper standards. The Court said: (SCC p. 552, para 26)

"The State Government by laying down the eligibility qualification namely the obtaining of certain minimum marks in the MBBS Examination by the candidates has not in any way encroached upon the regulations made under the Indian Medical Council Act nor does it infringe the Central power provided in Entry 66 of List I of the Seventh Schedule to the Constitution. The order merely provides an additional eligibility qualification."

None of these judgments lays down that any reduction in the eligibility criteria would not impinge on the standards covered by Entry 66 of List I. All these judgments dealt with additional qualifications - qualifications in addition to what was prescribed by the Central regulations or statutes.

46. There are, however, two cases where there are observations to the contrary. One is the case of State of M.P. v. Nivedita Jain, a judgment of a Bench of three Judges. In this case the Court dealt with admission to the MBBS course in the medical colleges of the State of Madhya Pradesh. The rules framed by the State provided for a minimum of 50% as qualifying marks for the general category students for admission to the medical colleges of the State. But for the Scheduled Castes and the Scheduled Tribes the minimum qualifying marks were prescribed as 40%. Later on, the minimum qualifying marks for the Scheduled Castes and the Scheduled Tribes were reduced to 0. The Court observed: (SCC p. 305, para 17)

That it was not in dispute and it could not be disputed that the order in question

was in conflict with the provisions contained in Regulation II of the regulations framed by the Indian Medical Council.

But it held that Entry 66 of List I would not apply to the selection of candidates for admission to the medical colleges because standards would come in after the students were admitted. The Court also held that Regulation II of the regulations for admission to MBBS courses framed by the Indian Medical Council, was only recommendatory. Hence any relaxation in the rules of selection made by the State Government was permissible. We will examine the character of the regulations framed by the Medical Council of India a little later. But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority. Although this judgment is referred to in the Constitution Bench judgment of Indra Sawhney v. Union of India the question of standards being lowered at the stage of postgraduate medical admissions was not before the Court for consideration. The Court merely said that since Article 16 was not applicable to the facts in Nivedita Jain case Article 335 was not considered there. For postgraduate medical education, where the "students" are required to discharge duties as doctors in hospitals, some of the considerations underlying Articles 16 and 335 would be relevant as hereinafter set out. But that apart, it cannot be said that the judgment in Nivedita Jain is approved in all its aspects by Indra Sawhney v. Union of India.

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48. In this connection, our attention is also drawn to the emphasis placed in some of the judgments on the fact that since all the candidates finally appear and pass in the same examination, standards are maintained. Therefore, rules for admission do not have any bearing on standards. In Ajay Kumar Singh v. State of Bihar 1 this Court, relying on Nivedita Jain said that everybody has to take the same postgraduate examination to qualify for a postgraduate degree. Therefore, the guarantee of quality lies in everybody passing the same final

examination. The quality is guaranteed at the exit stage. Therefore, at the admission stage, even if students of lower merit are admitted, this will not cause any detriment to the standards. There are similar observations in Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan. This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing marks and a person who qualifies with high marks. If excellence is to be promoted at postgraduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs - calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in Ajay Kumar Singh v. State of Bihar and Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan.

The Indian Medical Council Act, 1956 and standards.

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57. In the case of Medical Council of India v. State of Karnataka a Bench of three Judges of this Court has distinguished the observations made in Nivedita Jain. It has also disagreed with Ajay Kumar Singh v. State of Bihar 1 and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning."

15. The decision of the Supreme Court in Adhiyaman Educational & Research Institute case (supra) is rendered only by the Bench consisting of 2 Judges. The ratio laid down in Adhiyaman Educational & Research Institute case (supra) is that the State cannot fix the higher qualification, cannot hold water, in view of the decision of the Constitutional Bench of the Supreme Court in Dr. Preeti Srivastava case (supra).

16. In the case of Vijay Kumar Sharma and others Vs. State of Karnataka and

others, , the following observations are made regarding the doctrine of repugnancy:

"88. The result of the above discussion leads to the following conclusions:

(a) The doctrine of repugnance or inconsistency under Article 254 of the Constitution would arise only when the Act or provision/provisions in an Act made by the Parliament and by a State legislature on the same matter must relate to the Concurrent List III of Seventh Schedule to the Constitution; must occupy the same field and must be repugnant to each other;

(b) In considering repugnance under Article 254 the question of legislative competence of a State legislature does not arise since the Parliament and the legislature of a State have undoubted power and jurisdiction to make law on a subject, i.e. in respect of that matter. In other words, same matter enumerated in the Concurrent List has occupied the field.

(c) If both the pieces of legislation deal with separate and distinct matters though of cognate and allied character repugnancy does not arise.

(d) It matters little whether the Act/provision or provisions in an Act falls under one or other entry or entries in the Concurrent List. The substance of the "same matter occupying the same field by both the pieces of the legislation is material" and not the form. The words "that matter" connotes identity of "the matter" and not their proximity. The circumstances or motive to make the Act/provision or provisions in both the pieces of legislation are irrelevant.

(e) The repugnancy to be found is the repugnancy of Act/provision/provisions of the two laws and not the predominant object of the subject matter of the two laws.

(f) Repugnancy or inconsistency may arise in diverse ways, which are only illustrative and not exhaustive:

(i) There may be direct repugnance between the two provisions;

(ii) Parliament may evince its intention to cover the whole same field by laying down an exhaustive code in respect thereof displacing the State Act, provision or provisions in that Act. The Act of the Parliament may be either earlier or subsequent to the State law;

(iii) Inconsistency may be demonstrated, not necessarily by a detailed comparison of the provisions of the two pieces of law but by their very existence in the statutes;

(iv) Occupying the same field; operational incompatibility; irreconcilability or actual collision in their operation in the same territory by the Act/provision or provisions of the Act made by the Parliament and their counterparts in a State law are some of the true tests;

(v) Intention of the Parliament to occupy the same field held by the State

legislature may not be expressly stated but may be implied which may be gathered by examination of the relevant provisions of the two pieces of the legislation occupying the same field;

(vi) If one Act/provision/provisions in an Act makes lawful that which the other declares unlawful the two to that extent are inconsistent or repugnant The possibility of obeying both the laws by waiving the beneficial part in either set of the provisions is no sure test;

(vii) If the Parliament makes law conferring right/obligation/privilege on a citizen/ person and enjoins the authorities to obey the law but if the State law denies the selfsame rights or privileges, negates the obligation or freezes them and injuncts the authorities to invite or entertain an application and to grant the right/ privilege conferred by the Union law subject to the condition imposed therein the two provisions run on a collision course and repugnancy between the two pieces of law arises thereby;

(viii) Parliament may also repeal the State law either expressly or by necessary implication but courts would not always favour repeal by implication. Repeal by implication may be found when the State law is repugnant or inconsistent with the Union law in its scheme or operation etc. and conflicting results would ensue when both the laws are applied to a given same set of facts or cannot stand together or one law says do and other law says do not do. In other words, the Central law declares an act or omission lawful while the State law says them unlawful or prescribes irreconcilable penalties/punishments of different kind, degree or variation in procedure etc. The inconsistency must appear on the face of the impugned statutes/provision/provisions therein;

(ix) If both the pieces of provisions occupying the same field do not deal with the same matter but distinct, though cognate or allied character, there is no repeal by implication;

(x) The court should endeavour to give effect to both the pieces of legislation as the Parliament and the legislature of a State are empowered by the Constitution to make laws on any subject or subjects enumerated in the Concurrent List III of Seventh Schedule to the Constitution. Only when it finds the incompatibility or irreconcilability of both Acts/provision or provisions, or the two laws cannot stand together, the court is entitled to declare the State law to be void or repealed by implication; and

(xi) The assent of the President of India under Article 254(2) given to a State law/ provision, provisions therein accord only operational validity though repugnant to the Central law but by subsequent law made by the Parliament or amendment/ modification, variation or repeal by an act of Parliament renders the State law void. The previous assent given by the President does not blow life into a void law.

Scope and operation of Rule of Pirn and Substance and predominant purpose vis-

a-vis concurrent list."

17. In the light of the said decision, it is argued that in Clause (b) of Paragraph 88, it is stated that the doctrine of repugnancy will come into play when both the legislation are framed by the Central and the State legislations are made in exercise of powers conferred by Concurrent List. In the present case, the Regulations framed by the Indian Medical Council by virtue of powers, under Entry 66 of the Union List and State Rules are made under Entry 25 of the Concurrent List.

18. The decision of the Supreme Court in State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, , is also referred to in reiteration of the contention that the State can fix higher qualification for admission to engineering course. The observations made in paragraphs 9 and 10 are gainfully referred to, which run as follows:

"9. Entry 25 of List III and Entry 66 of List I have to be read together and it cannot be read in such a manner as to form an exclusivity in the matter of admission but if certain prescription of standards have been made pursuant to Entry 66 of List I, then those standards will prevail over the standards fixed by the State in exercise of powers under Entry 25 of List III insofar as they adversely affect the standards laid down by the Union of India or any other authority functioning under it. Therefore, what is to be seen in the present case is whether the prescription of the standards made by the State Government is in any way adverse to, or lower than, the standards fixed by AICTE. It is no doubt true that AICTE prescribed two modes of admission - one is merely dependent on the qualifying examination and the other, dependent upon the marks obtained at the common entrance test. The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by AICTE, can it be said that it is in any manner adverse to the standards fixed by AICTE or reduces the standard fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by AICTE would allow admission only on the basis of the marks obtained in the qualifying examination, the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by AICTE is inexorable and that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in Dr. Preeti Srivastava case. It is no doubt true, as noticed by this

Court in Adhiyaman case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not a very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher man the mere pass marks. Excellence in higher education is always insisted upon by a series of decisions of this Court including Dr. Preeti Srivastava case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

10. Argument advanced on behalf of the respondents is that the purpose of fixing norms by AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including Dr. Preeti Srivastava case that the State can always fix a further qualification or additional qualification to what has been prescribed by AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter which would go into the question of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by AICTE they should be admitted even if they fall short of the criteria prescribed by the State. The scope of the relative entries in the Seventh Schedule to the Constitution has to be understood in the manner as stated in Dr. Preeti Srivastava case and, therefore, we need not further elaborate in this case or consider arguments to the contrary such as on application of occupied theory no power could be exercised under Entry 25 of List III as they would not arise for consideration."

19. It is submitted that although the said course pertains to admission to engineering course, the ratio laid down by the Supreme Court in Dr. Preeti Srivastava case (supra) relating to medical course is also referred to and it is held that such prescription of additional qualification does not amount to repugnancy, but the object of such act on the part of the State only improve the quality of education and also to see that more merited persons are promoted to pursue the education in the medical and technical fields.

20. The decision of this Court in Siddhartha Sarkar and Others Vs. State of Assam and Others, , is relied on. This decision is rendered by this Court following the ratio of the Supreme Court in Dr. Preeti Srivastava case (supra) and S.V. Bratheep case (supra) and in the said decision; it has been held that prescribing of higher qualification does not amount to repugnancy.

21. Upon thoughtful consideration of the propositions of law and the facts canvassed before us, it is clear from the decisions rendered that the State legislation fixing higher qualification than the one prescribed by the AICTE or

Indian Medical Council is not held to be outside the legislative competence of the State powers. One thing to be noticed significantly that in all the cases referred to, the disputed facts pertain to the intake capacity and laying down the marks to be obtained to seek admission; but in none of the cases referred to, the issue regarding the outer age limit was under consideration.

22. The conflict between the State and Central legislations may also peculiarly arise in a situation where some of the entries in the Union List overlap the Entries in the Concurrent List The State can in exercise of its legislative domain in Entry 25 of the Concurrent List subject to the provisions of Entries 63, 64 and 65 of the List vocational and technical training of labour. In other words, the State can legislate on the matters regarding the technical and medical education, except the matters, which are covered by Entry 66 of the List I. In such a situation, a question would arise whether State framing Rules or the law in exercise of powers under Entry 25, how far would be competent? One thing to be noted significantly would be that the Entry 25 of the Concurrent List is not a redundant or otiose provision, it cannot be said that Entry 66 of the Union List is all comprehensive and leaves no scope for the State to legislate on any of the aspects of the technical and medical education.

23. The Supreme Court in the case of State of Kerala and Others Vs. Mar Appraem Kuri Company Ltd. and Another, makes a reference of paragraph 64 to the decision of the Supreme Court in M. Karunanidhi Vs. Union of India and Another, , wherein the following observations are made regarding the concept of repugnancy:

"35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:

1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

24. No doubt, if there is a specific provision made in the Regulations framed by the Indian Medical Council, any contra legislation by the State, which is inconsistent with the explicit provisions of the Regulations of Indian Medical Council, should definitely be held as repugnant and only saving feature would be to comply with Article 254. The Supreme Court has categorically held that fixing

of higher qualification than the one prescribed by the Indian Medical Council or AICTE is not held to be repugnant and the object of such fixation was held to be a laudable one to have higher qualitative output. No doubt, the Supreme Court in Visveswaraiah Technological University case (supra) has worked out an equitable solution that when the State fixes higher qualification for admission and the persons, who are higher qualified, all of them get admission and still if some seats are left vacant, it is held that the person with basic qualification fixed by the AICTE have to be accommodated, that is perhaps an equitable solution laid down by the Supreme Court. If the decisions of the Supreme Court in Dr. Preeti Srivastava case (supra) and S.V. Bratheep case (supra) are taken into consideration in the context of the specific provisions of the Regulations framed by Indian Medical Council, it is to be seen that the Medical Council has not prescribed any maximum age limit for admission and that issue is kept open.

25. Keeping in view the ratio laid down by the Supreme Court in M. Karunanidhi''s case (supra) that in order to call the provision of the State law in conflict with, and repugnant to, the law made by the Centre, there should be a clear and direct inconsistency between the Centre and the State and such inconsistency should be absolutely irreconcilable. It is further laid down that there can be no repeal by implication unless inconsistency appears on the face of the two statutes. Further the two statutes occupy a particular field and there is no room or disability for both the statutes operating in the same field without coming into collusion with each other. If the said test is applied to the facts in hand, the argument that by inference it has to be held that the Indian Medical Council, as a policy did not fix the outer age limit, is untenable merely because there is no provision made for outer age limit The said argument is based on inference and implication since it is held by the Supreme Court in M. Karunanidhi''s case (supra) that there would be no repeal by implication unless inconsistency appears on the face of the two statutes. In the present case, the issue of outer age limit was kept open by the Indian Medical Council and to that extent; the field remained unoccupied by the Regulation made by the Indian Medical Council. Therefore, there is no bar for the State to regulate with regard to the outer age limit. If the Indian Medical Council had framed any Regulation fixing the outer age limit the State, in its limited jurisdiction under Entry 25 could not have fixed the outer age limit contrary to the one fixed by the Indian Medical Council.

26. The next question would be whether there is any rational nexus between the upper age limit fixed by the State Government and object sought to be achieved. In this regard, the Additional Advocate General has pointed out that the policy and the scheme of medical education pursued in the State of Assam, has been formulated keeping in view the optimum and appropriate age in which a person seek to complete 1 year rural service in lieu of 5 years of urban health service, the time to be spent for higher education, post-graduation and the maximum age for seeking employment in State service are all taken into consideration while fixing maximum age of 24 years for admission in medical courses.

27. As aforesaid, it is true, may be unfortunate that the petitioner, who is in tantalizing situation missing admission being just over aged by six months. The State, in its legislative wisdom has fixed the upper age limit to pursue its health and medical goals and it cannot even be construed as arbitrary. As pointed out by Additional Advocate General, it is true that if no upper age limit is fixed flood gate will open, any person of any age may try to seek admission and persons passing out medical course not within the envisaged age group, may not be useful to the State to promote its medical and health policy to implement as a welfare measure and to cater the needs of the poor, downtrodden and unprivileged group.

28. Therefore, in view of the reasons and discussion made above, we are of the view that there appears to be no repugnancy in the State Rules while fixing the upper age limit of admission in medical college.

29. Accordingly, the petition is dismissed. Since there appears to be no violation of the orders, the contempt petition is also dismissed.

