

(1973) 12 PAT CK 0011

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 756 of 1973

Sardar Gyan Singh Purewal and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 05-12-1973

Acts Referred:

Bihar Medical Educational Institutions (Regulation and Control) (Second) Ordinance, 1973 — Section 10, 12, 8, 9
Constitution of India, 1950 — Article 19, 20, 213, 254

Citation : AIR 1975 Patna 69 : (1974) 7 PLJR 118

Hon'ble Judges : S.N.P. Singh, J; S.K. Jha, J

Bench : Division Bench

Advocate : Basudeo Prasad, Radha Mohan Prasad, Narendra Prasad and Renuka Sharma, for the Appellant; A.G. and Prabhu Nath Roy, for the Respondent

Final Decision : Partly Allowed

Judgement

S.K. Jha, J.—The petitioners have filed this application under Article 226 of the Constitution of India challenging the validity of the Bihar Medical Educational Institutions (Regulation and Control) Ordinance, 1972 the official Hindi version of which has been annexed as annexure "3" to this writ application. It may be stated here that this Ordinance was subsequently extended with all the provisions thereof remaining the same by the Bihar Ordinance No. 16 of 1973 whose life was further extended by a subsequent ordinance being Bihar Ordinance No. 94 of 1973, the latest being known as Bihar Medical Educational Institutions (Regulation and Control) (Second) Ordinance, 1973. This last mentioned Ordinance is in force on the present day. It was stated at the Bar that in reality though challenge was made in regard to the validity of the Ordinance of 1972 (Annexure "3" to the writ application), in substance, the challenge is directed against both the subsequent ordinances by which the 1972 Ordinance was kept alive. The other prayer made by the petitioners is to quash annexures "9", "10" and "11" to this writ application. Annexure "9" is a notice of the Government of Bihar by which it was notified to all concerned that the State

Govt., in exercise of the powers conferred by Section 10 of the Bihar Medical Educational Institutions (Regulation and Control) Ordinance, 1973 (Bihar Ordinance 16 of 1973) have rejected permission to run the Guru Govind Singh Medical College and have asked the sponsors of the college to close down the college and refund to the students proportionate fee, donation and other charges for the unexpired period, failing which the sponsors of the College would be liable to be prosecuted singly and jointly u/s 9 of the said Ordinance. It was further notified by the said Annexure "9" that on humanitarian ground "the State Government had decided to afford facilities, as far as possible, to the students of the abovementioned college for admission to the other medical colleges of the State subject to the suitability of the students concerned in accordance with the regulations of the Medical Council of India and the University concerned. Annexure "9" was issued by a memo dated the 20th April, 1973 a copy of which was served on the Principal of the Guru Govind Singh Medical College. On the same date i.e. on the 20th April, 1973 by memo No. 1380 (I) the Government of Bihar in the Health Department issued an order to the effect that under the aforesaid Ordinance by virtue of powers conferred u/s 12 thereof the State Government had authorised the Subdivisional Officer, Patna Sadar, to enter into the premises of the aforesaid college and to lock the same and collect all materials belonging to the college in one room in order to lock and seal them. A copy of the aforesaid order is Annexure "10" to this application. On the same date again i.e. on the 20th April, 1973 by memo No. 1391 (I) addressed to the Secretary of the aforesaid medical college, the State Government in the Health Department forwarded an order to the effect that the application on behalf of the college for sanction had been rejected and that the medical educational institution known as Guru Govind Singh Medical College should be closed within a period of three months from the date of the order and there was a further direction contained in the aforesaid order that the fee for the unexpired period, donation and other things charged from the students in their proportionate ratio should be refunded to all the students concerned failure of which will attract the penal provisions of the Ordinance contained in Section 9 thereof both jointly and separately against the sponsors of the college. A copy of this last mentioned order of the Government has been marked an-nexure "11" to this application. This, in substance, is the prayer of the petitioners in this case.

2. Before setting out the points involved for determination in this application I think it advisable to give the facts shortly, which are not much in dispute. There was a Guru Govind Singh Vidya Sewik Society registered in the year 1971 under the Societies Registration Act, 1860. In April, 1971 a medical educational institution known as Guru Govind Singh Medical College was started and applications were invited from the intending students for admission into this institution. On the 24th May, 1971, however, the Governor of Bihar promulgated an Ordinance making certain amendments to the Universities Act whereby restrictions were put upon the powers of the Universities to affiliate medical colleges to the effect that no such affiliation could be accorded without the

requisite sanction of the State Government. From the 1st of September, 1971 the classes in the aforesaid college were duly started and one of the terms of admission of the students to the classes was payment of a fixed donation as well as a consolidated fees apart from certain other charges and in the prospectus of the college it was mentioned (vide annexure "1") that the donations and the fees, inter alia, shall not be liable to be refunded once students were admitted into the college. In pursuance of the provisions of the Ordinance of 24th May, 1971 the college aforesaid applied to the State Government in November, 1971 (vide annexure "2") for sanction for its being affiliated to the Magadh University. All the requisite formalities, including payment of a fee of Rs. 500 were observed by the college while filing the aforesaid application. Subsequently, in February, 1972 the college filed a separate application to the Magadh University for its affiliation (vide annexure "2/a") but the Magadh University returned the aforesaid application evidently because it could not deal with the matter in the absence of any sanction from the State Government. Thereafter the Bihar Medical Educational Institutions (Regulation & Control) Ordinance, 1972 (hereinafter referred to as "the 1972 Ordinance") was promulgated by the Governor of Bihar to the specific provisions of which I shall refer in some detail at an appropriate place. Suffice it to say here that under the provisions of the aforesaid Ordinance it was incumbent on any private college or any private medical institution intending to start imparting education in medical subjects to have prior sanction of the Government. It was also contemplated that the institutions which were already in existence should also apply for necessary sanction within a period of one month from the date of the coming into force of the Ordinance. In pursuance thereof, on 7th June, 1972 (vide annexure "4") another application was made to the State Government on behalf of the sponsors of the Guru Govind Singh Medical College and in this fresh application under the provisions of the Ordinance reference was made to the earlier application already filed. Thereafter, in 1973, the Guru Govind Singh Medical College was taken over by Guru Govind Singh Vidya Sewik Society mentioned above and in turn, on 24th January, 1973 the Guru Govind Singh Vidya Sewik Society Trust was created in which all the properties, assets and liabilities of the Vidya Sewik Society were transferred to the Board of Trustees created for the Trust, Thus the Trust aforesaid came to take over the Guru Govind Singh Medical College also with effect from 24th January, 1973. The petitioner No. 1 is one of the trustees of the aforesaid Trust and the Secretary thereof whereas the petitioner No. 2 is the Trust itself. In response to the application made by the sponsors of the Medical College in question under annexure "4" in continuation of the application made in November, 1971 (Annexure "2") the ultimate orders and directions of the Government were communicated to the sponsors of the college including the petitioners under annexures "9", "10" and "11" already mentioned above.

3. The main question for determination in this writ application is as to whether the 1972 Ordinance and the two subsequent Ordinance of 1973, the latest being Bihar Ordinance 94 of 1973, or any of the provisions thereof can be declared to

be ultra vires; if not, as to whether annexures "9", "10" and "11" impugned in the present writ application are in conformity with the provisions of the Ordinance referred to above. Before dealing with and in order to appreciate the respective contentions put forward by Mr. Basudeo Prasad, learned counsel for the petitioners and the learned Advocate-General for the respondents it is necessary to set out in some detail the relevant provisions of the Ordinance in question which are mutatis mutandis the same in all the three ordinances. Since much stress has been laid upon the Statement of Objects and Reasons and the Preamble to the Ordinance in question, I think it advisable to set out fully the preamble and the objects which run as follows. (Since there is no official version of the Ordinance in question which are all in Hindi, English rendering has been made by us with due assistance of counsel of the parties):--

"Whereas the Bihar Legislature is not in session and whereas the Governor of Bihar is satisfied that in spite of repeated warnings given by the Government through Press Notes the object of Medical Education was being defeated by opening Medical Educational Institutions haphazardly by persons and Societies of this State registered under the Societies Registration Act, 1860 without making provisions for adequate teaching facilities and the students taking admissions in such institutions by giving capitation fee or donation are being put to great loss and the circumstances are such that it has become necessary to regulate and control the starting of Medical Educational Institutions in the State of Bihar;

It is, therefore, in exercise of the powers conferred by clause I of Article 213 of the Constitution of India, that the Governor promulgates the following Ordinance.

2. No person shall, in contravention of the provisions of this Ordinance-

(i) organise, protect, manage or convert any institution for undertaking, running, making provisions for imparting education in the branches of medical science and other branches connected therewith in the form of medical education;

(ii) admit or propose admission in such a course of a University regulated by a Central or State Government law, which lead to degree, diploma and certificate or examination in the branches of medical science or the connected branches of the modern medical science;

(iii) make arrangement for imparting instructions, giving lectures, teaching and practical work in laboratories in medical education, whether it may lead to the conferring of a degree, a diploma or a certificate or to any examination in medical science or its connected branches:

Provided that no person or institution registered under Societies Registration Act, 1860 nor any unregistered agency shall start any course without the prior permission of the Government:

Provided further that the above permission shall be obtained before admitting or nominating any student for the proposed medical course.

Explanation: The term "person" used above includes body, institution or organisation mentioned in the first proviso."

Section 3 of the Ordinance runs as follows:

"3. The Governing Body or the Organising Committee or body or institution of any type intending to start a private medical college within the State of Bihar, shall apply to the State Government in the Health Department for permission to do so.

Such application shall contain the following information in writing under the signature of the Chairman or Organiser of Governing Body or the Organising Committee.

- (a) The proposed date of opening the college;
- (b) The constitution of the college;
- (c) The composition of the Governing Body with whom the properties of the college are vested;
- (d) Donation and other recurring and non-recurring sources of income if any;
- (e) Permanent endowment, if any; (f) Anticipated financial resources of the college;
- (g) Details of land and building for the college and the attached teaching hospital already available for starting the college and the hostel;
- (h) Details of qualified technical staff which would be available at the time of opening of the college;
- (i) Details of equipment, laboratories, museum and library set up for the functioning of the college;
- (j) Details of bed strength of the teaching hospital or hospitals attached to the college, the projection of annual plans leading to setting up of the required number of hospital beds according to the recommendations of the medical council of India and the control of the college over such hospital or hospitals.
- (k) The proposed method of recruitment of the teaching staff and the service conditions of such teaching staff;
- (l) The proposed number of students to be admitted in the year of starting of the college, the basis of their selection, the scale of fees to be charged and any projection with regard to increase of annual admissions."

It is not necessary to quote at length the provisions of Sections 4, 5, 6 and 7 the substance of which I shall presently give. Section 4 provides that any applicant for sanction or permission shall have to undertake that running of the institution shall not be for private gain or profit; that any change of management shall be forthwith intimated to the Government; that all fees and donations or any other

money received shall be credited to the college fund forming part of the revenues of the college and that the number of yearly admissions shall not be increased at any time without prior approval of both the University concerned and the State Government and that instruction would be imparted in accordance with the standards laid down by the Medical Council of India and the connected University. Sections 5 and 6 provide the procedure for enquiry on receipt of such an application by the State Government.

Section 7 makes the Ordinance applicable to all such private medical colleges and medical institutions which are not affiliated on permanent or temporary basis to any University of the State of Bihar. Since much will depend upon the language of Sections 8, 9 and 10 of the Ordinance, they need to be reproduced here:

"8. All such institutions which are running without the prior permission or approval of the State Government, are expected to apply for such permission within a period of one month from the date of promulgation of this Ordinance and shall not admit any student from the date of promulgation of this Ordinance until permission is given by the Government. If they do not apply within the prescribed period or their request is rejected by the State Government, they shall be deemed to have been established in contravention of the provisions of this Ordinance.

9. Any person contravening any provisions of this Ordinance shall be liable to maximum fine of Rs. 10,000 also with rigorous imprisonment for a maximum period of 3 years. If the offence continues, he shall be liable for a further fine of Rs. 1000 per day from the first conviction upto the period the offence continues.

The offence under this section shall be non-bailable, cognizable.

10. If the State Government thinks after consideration of the application filed in accordance with the provisions of Section 3 that the establishment is not eligible for the grant of permission, or is not qualified for the same, the management of such institution shall have to close the institution within a period of three months from the date of such rejection and they shall have to return the proportionate amount of the fees, donations or other charges for the unexpired period failing which they shall be liable to punishment jointly and individually u/s 9 of the Ordinance."

The only other relevant provision of the Ordinance which needs to be referred to is Section 12 which empowers the State Government to authorise any officer to inspect or enter upon the premises of any institution working in contravention of the provisions of this Ordinance for the purpose of implementing the provisions of the Ordinance and in course of such inspection or implementation, the officer authorised shall also be empowered to close the institution and lock and seal the articles lying there after making, an inventory of the same.

4. Mr. Basudeo Prasad, learned counsel for the petitioners urged that Sections 8,

9 and 10 of the impugned Ordinances should be struck down as ultra vires and unconstitutional on account of their being in violation of Article 20 of the Constitution in so far as the offences have been created under the impugned Statute with retrospective or retroactive operation. Learned counsel further challenged the vires of the impugned Statute on the ground that Section 10 thereof was further in contravention of the provisions contained in Article 213 read with Article 254 of the Constitution of India. Learned counsel has further urged that in any event, the provisions contained in Sections 8, 9 and 10 of the impugned Ordinance were wholly arbitrary and unreasonable and were, therefore, violative of the provisions of Article 19(1)(f) of the Constitution. At the initial stage of the hearing, learned counsel had also challenged the vires of the Ordinance on the ground that it offended the provisions of Article 30 of the Constitution. Subsequently, however, Mr. Basudeo Prasad withdrew the submissions with regard to challenging the vires in so far as Article 30 was concerned. Learned counsel laid great stress on that particular phrase in Section 8 whereby it has been laid down "they shall be deemed to have been established in contravention of the provisions of this Ordinance". Laying great stress upon that phrase in Section 8 learned counsel advanced an argument that under the provisions of Section 9 any person contravening any of the provisions of the Ordinance was to be held liable to a maximum fine of Rupees 10,000 and also with rigorous imprisonment for a maximum period of three years. The argument was that if it be held, as has been laid down in Section 8, that the college of the petitioners shall be deemed to have been established in contravention of the provisions of this Ordinance, then the penal provisions incorporated in Section 9 would at once be attracted against the petitioners as well as the other sponsors of the college for having violated the provisions of the Ordinance at a time when in fact this law was not in force; and the offence u/s 9 had also been made non-bailable and cognizable. Learned Advocate General while countenancing this submission of learned counsel for the petitioners submitted that there was nothing in Section 9 which could give an indication of its having created any action penal either retrospectively or retroactively. According to learned Advocate General Section 8 has nothing to do with any penalty provided in the Ordinance elsewhere and Section 9 could not be so correlated with Section 8 as to impute the retrospective clause in Section 8 itself as introducing the penal clause in Section 9 into Section 8. I think there is much force in the contention of learned Advocate General. Section 8 by itself does not hold any action to be penal although u/s 8 the petitioners may be said to have established the college in contravention of the provisions of this Ordinance at the time when the college was started. It does not follow therefrom that by virtue of the express language of Section 9 they shall be liable for any acts of omissions and commissions which they might have committed at a time when this Ordinance had not come into force or at a time when the required permission had not been refused. Section 9 clearly provides that any person contravening any provision of the Ordinance shall incur the penal vicissitude and the infraction of any provisions of the Ordinance and Section 9 must be held, in my view, to have a prospective

operation. The only way in which Section 9 can be reconciled with that portion of Section 8 which says that it shall be deemed to have been established in contravention of the provisions of the Ordinance is that although further continuance of any such college - which has been started before coming into force of the Ordinance in question may be barred by refusal of requisite sanction by the State Government, the contravention of the provisions of the Ordinance for the purpose of attracting the penal clause in Section 9 would start on and with effect from the date of the State Government refusing to accord sanction or the end of the period which has been granted by the State Government for such closure. That being the view that I take of Section 9 read with Section 8 there is no question of any retroactive or retrospective operation of any penal clause in the Ordinance so as to attract the provisions of Article 20(1) of the Constitution nor are the authorities in *West Ramnad Electric Distribution Co. Ltd. Vs. State of Madras*, and *Muhammad Qamar v. Balwant Rai Choudhary* 1958 BLJR 142 of any avail to learned counsel for the petitioners. There can thus be no question of any invalidity on the ground of infraction of Article 20 of the Constitution; nor can it be said that there is any unreasonable restriction incorporated in the provisions of Sections 8 and 9 aforesaid so as to attract even the provisions of Article 19(1) of the Constitution. The nexus between the object of the Ordinance which is to prevent mushroom and indiscriminate growth of private medical institutions and the restrictions imposed by the provisions of Sections 8 and 9 thereof is quite rational and cannot in any way be said to be not interrelated or connected.

5. In so far as the challenge of Section 10 or for that matter Section 8 read with Section 10 on the ground of any contravention of the provisions of Article 213 read with Article 254 of the Constitution is concerned, that also, in my opinion, has no substance. Learned Advocate General has rightly contended that there is absolutely no question of invoking the provisions of Article 213 and Article 254 of the Constitution in so far as the Ordinance in question is not supposed either to traverse or cover any occupied field which may be the subject-matter for the Union Legislature (Parliament) either in the Union list or in the concurrent list. The argument of Mr. Basudeo Prasad that the provisions of Sections 8 and 10 directly affected the occupied fields of the Law of Contract which was a Central subject has no force for the simple reason that none of the provisions of the Ordinance is dealing directly with the Law of Contract. The legislation in question, as has been rightly argued by learned Advocate General falls within entry 6 and entry 11 of the second list of the seventh Schedule to the Constitution. Entry 6 of the second list relates to matters of public health and sanitation; hospitals and dispensaries whereas entry 11 thereof relates to education including Universities subject to certain provisions. Evidently the legislation in question is a legislation relating to education in Universities with special reference to the imparting of medical education which is the primary concern in so far as public health and sanitation, hospitals and dispensaries are concerned. That being so the provisions of Section 10 with regard to refund of any capitation fee or donation fee cannot be said to affect the field covered by the Law of Contract but is merely

incidental to the carrying into effect the healthy imparting of medical education in the State covered by entries 6 and 11 mentioned above. The doctrine of pith and substance has rightly been pressed into service by learned Advocate General and the principles enunciated in the case of *Bhauri Lal Jain and Another Vs. Sub-Divisional Officer and Others*, apply with full force to the facts of the present case. In that case although the legislation was directly in respect of land tenancy, incidentally the question of the period of limitation had also been incorporated in the impugned legislation, namely, the *Santhal Parganas Tenancy (Supplementary Provisions) Act (14 of 1949)* read with Regulation 1 of 1969 and it was held that any incidental touching of a covered field for the furtherance of the main object which was within the legislative competence of the State Legislature would at once attract the doctrine of pith and substance and will not attract the principles laid down in the cases of *Attorney-General of Alberta v. Attorney-General of Canada* AIR 1943 PC 76 and the *Attorney-General of Saskatchewan v. The Attorney-General of Canada* AIR 1949 PC 190. Thus, there is no substance in any of the contentions put forward by Mr. Basudeo Prasad, learned counsel for the petitioners challenging the vires of the Act on any of the grounds mentioned above.

6. That brings us to the question as to whether the impugned orders and notices contained in annexures "9", "10" and "11" of this writ application can be said to be in accordance with the provisions of the Ordinances or are in contravention thereof, for they can be struck down only to such an extent, if at all, if they are in contravention of any of the provisions of the impugned Ordinances. The real grievance of the petitioners seems to be with regard to the directions and orders contained in the impugned annexures whereby the sponsors of the college in question had been asked to refund the entire donations and the proportionate fees and other charges to the students. The argument of Mr. Basudeo Prasad challenging the said direction is based upon the point that it is not covered by the provisions of Section 10 of the Ordinance. Section 10 in turn applies to such institutions which had filed an application u/s 3 for sanction, intending to start medical college or institution in future. It is further submitted that the cases of such institutions which were already in existence before the impugned Ordinance came into force are governed by the provisions of Section 8. In order to appreciate this submission of learned counsel I shall briefly set out the scheme of Sections 3 and 8. As may be seen from the language of Section 2 quoted above, under the two provisos to Section 2 (iii) no person or institution is permitted to start any course without the prior permission of the Government and such permission, according to the second proviso shall have to be obtained before admitting or nominating any student on the rolls of such institution for the proposed medical course. Section 3 thereafter lays down that the governing body or the organising committee or any body or institution of any type intending to start a private medical college, shall have to apply to the State Government in the Health Department for the necessary permission and the second part of Section 3 lays down the pro forma in which certain informations are required to

be furnished in such an application. In terms, therefore, both the substantive part of Section 3 and the procedural part which follows thereafter are in relation to any body or institution intending to start a medical college for whom it is necessary under the two provisos to Section 2 (iii) to obtain the sanction before embarking upon any such venture. Section 8, In its turn, contemplates that such institutions which were already in existence and were running without the prior permission or approval of the State Government on the date when the Ordinance came into force, were expected to apply for such permission within a period of one month from the date of the Ordinance. Section 10 specifically states that if the State Government thinks after consideration of the application filed in pursuance of the provisions of Section 3 that the establishment is not eligible then the ensuing results envisaged in later part of Section 10 would follow. I think, there is much substance in this submission of learned counsel. In my view, Section 10 specifically, in unambiguous language refers to the rejection of such applications as were envisaged to be filed under the provisions of Section 3 which, as I have already shown above, related to applications for permission to be submitted by such institutions or persons who were proposing or intending to start medical education in future. The entire pro forma given in the different columns of second part of Section 3 fully supports this view in so far as none of the columns or items with regard to which information is sought to be furnished under the procedural part of Section 3 can be said to apply to an institution which is already being run before the Ordinance came into force. To give a few examples, the proposed date of opening of the college, anticipated financial resources of the college, details of land and building for the college and the teaching staff and hospital available for starting the college and the hostel, details of qualified technical staff which would be available at the time of the opening of the college, details of equipment, laboratories etc. set up for functioning of the college, proposed method of recruitment of the teaching staff, proposed number of students to be admitted, all these items can be of no relevancy to institutions which were already being run on the date of the promulgation of the Ordinance. The contention of learned Advocate-General that Section 8 should be treated as a fecund provision and in order to avoid all anomalies, application u/s 8 should also by necessary implication and intendment be treated to cover such applications which are envisaged in the procedural part of Section 3 has, in my view, no substance. Learned Advocate-General vehemently contended that the entire object of the Ordinance will be frustrated and the entire mischief which was sought to be removed and overcome by the promulgation of the impugned Ordinance would be rendered nugatory if such a meaning be attributed to the provisions of Section 10. According to the submission of learned Advocate-General, the beginning part of Section 10 which mentions the consideration of the "application filed in accordance with the provisions of Section 3" should be treated to be a mere loose draftmanship and Section 10 should, by deeming that such a clause were not there, be so construed as to include applications of all types either covered by the substantive part of Section 3 or by the provisions of Section 8. Learned Advocate-General

has placed strong reliance upon a number of decisions which I shall presently deal with.

7. Reliance has been placed on the case of *Salmon v. Buncombe*, 11 App Cas 627 and much stress has been laid upon the following observations of Lord Hobhouse at page 634:

"It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used."

Reliance has further been placed upon a passage at the same page in which it is said "The preamble is of great importance in finding out the object". In that case, the learned Advocate-General rightly contended that in order to avoid rendering the provisions of the entire statute nugatory some words towards the end of the statute were construed as being merely unskilful draftsmanship. But in the same case Lord Hobhouse has pointed out that such a construction cannot be justified except in cases of absolute necessity or absolute intractability of the language used. It has further been pointed out at page 635 by Lord Hobhouse that-

"The difficulty is, and their Lordships quite agree that it is a great difficulty, that a condition which is apparently and at first sight the correlative condition of the conditional words "could or might exercise" is expressed by the last nine words of the section. And the question is whether that expression excludes all other implication. If such a construction left a substantial operative effect to the enactment, it might be necessary to answer that question in the affirmative."

The ratio of the case, in my view is quite clear. If by construing the statute in a particular manner the entire field upon which it is sought to be operative and the entire mischief which is sought to be remedied by introduction of such a statute would be rendered nugatory merely by insertion of some innocuous words on account of unskilful draftsmanship, the same should not stand in the way of such a construction being put as would not render the whole statute futile. But if by construing a particular statute literally and strictly in its grammatical sense, there still is left a substantial field to the enactment to operate upon then no court has held it to be a justification for assuming that certain provisions have been inserted by way of carelessness and others have been omitted not consciously but inadvertently. If the contention of learned Advocate-General on the true construction of Section 10 be acceptable then it must not only be read into Section, 10 as if the application filed in accordance with the provisions of Section 3 were not there but that also applications filed under the provisions of Section 8 had been inadvertently omitted. The principle in such type of cases has well been enunciated and summed up by Craies on Statute Law, Seventh Edition at page 69, which runs thus:

"A second consequence of this rule is that a statute may not be extended to

meet a case for which provision has clearly and undoubtedly not been made. The intention of the legislature, however, obvious it may be, must no doubt in the construction of statutes be defeated where the language it has chosen compels to that result, but only where it compels it."

The same principle in a different form has been enunciated by Maxwell on the Interpretation of Statutes, Twelfth Edition, at page 205 :

"But convenience is not always a safe guide to construction. However difficult it may be to believe that Parliament ever really intended the consequences of a literal interpretation, we can only take the intention of Parliament from the words which they have used in the Act, and therefore the question is whether these words are capable of a more limited construction. If not, then we must apply them as they stand, however unreasonable or unjust the consequences, and however strongly we may suspect that this was not the real intention of Parliament."

8. Learned Advocate-General has placed great reliance on three decisions of the Supreme Court for the purpose of bringing home his point with regard to the construction of Section 10 of the Ordinance. They are (i) *Jyoti Prakash Mitter Vs. Hon'ble Mr. Justice Himansu Kumar Bose*, Chief Justice, High Court, Calcutta and Another, (ii) *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, and, (iii) *Sirajul-Haq Khan v. The Sunni Central Board of Waqf*, U. P. AIR 1959 SC 186). In paragraph 8 of the case of Deputy Custodian it has been laid down that the construction of Section 7 (1) of the Evacuee Property Act, which was the relevant statutory provision being construed by the Supreme Court, should not be based solely or primarily on the mechanical application of the rules of grammar as the same could lead to vary anomalous results and the argument of Mr. B. Ganapathy Iyer to the effect that it was open to the Court to take into account the obvious aim and object of the statutory provision when attempting the task of construing its words was accepted, for otherwise, as the Supreme Court held, the entire purpose of the legislation would be defeated if any other literal construction was to be adopted. In the case of *M. Pentiah* the Supreme Court had held, quoting with approval a passage from Maxwell that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of legislation we should avoid a construction which would reduce the legislation to futility. To the same effect is the decision of the Supreme Court in the case of *Siraj-ul-Haq Khan* in which it has been stressed that it is a well-settled rule of construction that the courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. No exception can be taken to the principle laid down by the Supreme Court in the aforesaid three cases. But the crux of the matter in the present case is as to what was the object sought to be achieved and the mischief primarily sought to be remedied by promulgating the Ordinance in question. The very preamble and the object portion on which great reliance has been placed by learned Advocate-General clearly states that it has become necessary to regulate

and control the starting of medical educational institutions in order to avoid mushroom growth of medical institutions by unscrupulous sponsors in order to blackmail and/or to coerce the students into paying huge sums of money without there being necessary guarantee of their being given proper and suitable educational facilities. The intention of the statute-makers is quite clear not only from the object but from the provisions of Sections 2 and 3 which expressly, in so many terms, refer to the applicability of the provisions of those sections to such institutions or persons who were intending or proposing to start a medical educational institution. The subject-matter or the field relating to institutions which were already in existence from before has been separately classified and covered by the provisions of Section 8. There can, therefore, in the present case be no doubt as to what the framers of the statute had in their mind while treating as two distinct classes: such institutions which were already in existence on the one hand and those which were proposed or intended to be started on the other, the latter being covered by the provisions of. Sections 2 and 3 whereas the former by those of Section 8. Therefore, when specific reference has been made in Section 10 to an application in pursuance of the provisions of Section 3 it cannot be construed in either of the two manners suggested by learned Advocate-General: neither can the express reference to Section 3 be ignored in Section 10 nor can the provisions of Section 8 be read with Section 3 where it has been referred into Section 10. It cannot be said that if Section 8 be not read into the provisions of Section 10, then no substantial field will be left or will remain upon which the provisions of Section 10 can operate. Furthermore, it would be doing clear violence to the express and unambiguous language of Section 10 either by not reading a provision referred to there (namely, Section 3) or by reading into it the provisions of Section 8 which are not specifically covered. In my view, there are three well-established principles of construction of statutes which stand in the way of accepting the learned Advocate-General's contention with regard to the true construction of Section 10 of the Ordinance:--

(i) The object of all interpretations is to discover the intention of the framers of the statutes and that intention must be deduced from the language used. The intention of Legislature is not to be speculated on as pointed out by Lord Watson in *Salomon v. A. Salomon & Co. Ltd.* (1897) AC 22, 38]-

" "Intention of the Legislature" is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication."

(ii) *Casus omissus* cannot be created or supplied. A statute shall not be extended to meet a case for which provision has clearly not been made. As laid down by the Judicial Committee of the Privy Council in *Crawford v. Spooner* (1846) 8

Moore PC 1]-

"We cannot aid the Legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there."

(iii) Where even if it be assumed that the language of Section 10 were ambiguous and that two possible constructions may be put upon it, the provision of Section 10 being in the nature of a penal clause, it must be strictly construed and the ambiguity must be resolved in favour of the person who would be liable to the penalty. To quote the language of Lord Esher M. R. in *Tuck & Sons v. Priester* (1887) 19 QBD 629 at p. 638]-

"If there is a reasonable Interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections."

9. It was next contended by the learned Advocate-General that there is yet another reason why Section 10 be not so construed as to aid the petitioners. The reason advanced was that there having been a contract between the college authorities and the students in pursuance of which moneys have been paid by the students, then if on account of statutory intervention that contract has been frustrated, then both in equity and under the provisions of the Indian Contract Act the petitioners would be liable to refund the consideration money. This argument, in my view, cannot be accepted for the simple reason that it militates against the very first submission of the learned Advocate-General that the provisions of the Ordinances were not intended to traverse purely the occupied field of the law of contract. It was merely incidental to the main object of the Act which in pith and substance covered the fields given to the State Legislature under items (6) and (11) of the second list of the seventh Schedule of the Constitution of India. If the reason advanced by the learned Advocate-General be accepted, then so far as the institutions which were already in existence from before the Ordinance came into force are concerned, it would be a legislation pure and simple on the occupied field of the Law of Contract which would render the provisions of Section 10 unconstitutional and ultra vires. Such a construction, it is well established, should not be put upon a statutory provision which would make it ultra vires, if by putting another reasonable construction such result can be avoided. For the foregoing reasons, I think the submission of Mr. Basudeo Prasad that Section 10, in terms, cannot apply to such institutions which were already in existence on the date when the 1972 Ordinance came into force and had been separately covered by the provisions of Section 8, must be accepted.

10. The necessary consequence of such a construction would, therefore, be that such institutions which were and have been already in existence on the date when the Ordinance came into force but whose applications for permission were subsequently rejected, would not be obliged under the provisions of Section 10 to return the proportionate amount of fees, donations or other charges at the

risk of attracting any of the penal provisions. The scheme of the Ordinance as may be noticed from what has been noted above already is that the Ordinance contemplates the existence of such persons or organisations or institutions which, though have not yet started imparting education in the medical field, have yet received as donations or fees or payments of other such nature before the starting of such institutions, for the only mandate put by the Ordinance on it is that they shall not admit any student to any course of study in the institution before sanction is accorded. Evidently, therefore, it is in respect of such cases where donations, fees or any other sort of payment have been received from the students by the institution before the students have been enrolled and the courses of study have been initiated that the course of refund etc. has been envisaged in Section 10 of the Ordinance. Therefore, that portion of annexure "9" by which it had been notified that by virtue of the powers conferred by Section 10 of the Ordinance the State Government have asked the sponsors of the college in question to refund to the students proportionate fee, donation and other charges for the unexpired period failing which the sponsors of the college will be liable to be prosecuted singly or jointly u/s 9 of the said Ordinance must be held to be bad as such a provision is not contemplated in the cases of institutions which were already in existence before the coming into force of the Ordinance. Directions or orders to the same effect incorporated in the last portion of annexure "11" by which the petitioners have been directed to return the proportionate fees, donations or other charges failing which they will attract the penal provision of Section 9 must also be held to be bad.

11. So far as the question with regard to the rejection of permission to run the Guru Govind Singh Medical College is concerned, no valid ground for attacking the said part of the order has been either submitted or made out in the petition nor can it be said that the refusal to accord such a permission is, in any way, unwarranted by the Provisions of the Ordinance. Similarly, the second paragraph of annexure "9" which deals with facilities to be given to the students of this college in so far as their admission to other medical colleges in the State is concerned, has neither been challenged nor is there any ground to warrant any interference.

12. Then remains the question as to whether the direction contained in annexure "10" authorising the Subdivisional Magistrate by virtue of power conferred under Sec, 12 to enter into the premises of the college in question and to lock and seal all the materials therein can be said to be legal or not. So far as the authority given to the Subdivisional Magistrate is concerned, in my view, there does not seem to be any illegality in the Sub-divisional Magistrate being authorised to enter into the premises in order to see that the orders of the Government are effectively implemented and the college is not allowed to function, cannot be said to be without an authority of law or even unreasonable. So also is the direction contained in the second part of annexure "10" namely that the Subdivisional Magistrate is authorised to lock and seal the materials relating to the educational institution in a room. This seems to be merely a temporary arrangement in order

to see that the orders of the State Government are effectively implemented and the petitioners do not clandestinely run any medical institution in the medical field. That, being so, in my view, there is no infirmity in any of the directions contained in annexure 10, In fine, therefore, such portions of annexures "9" and "11" are only quashed by which the petitioners have been directed to make a refund of the proportionate fees, donations and/or any other sums or fees charged by them from the students. The direction to the effect that the failure to do so would also entail penal consequences envisaged in Section 9 of the Ordinance must also be struck down as bad. In all other respects, the directions or orders contained in annexures "9" and "11" must stand. There seems to be no justification to quash any portion of annexure "10".

13. In the result, the application is partly allowed in the terms mentioned above, but, in the circumstances of the case, there will be no order as to costs.

S.N.P. Singh, J.

I agree.