

(1997) 07 KAR CK 0012
In the Karnataka High Court
Case No : Writ Appeal No. 8413 of 1996

State of Karnataka

APPELLANT

Vs

A Citizen of India and Others

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Constitution of India, 1950 — Article 15 (4), 162, 226, 73
Indian Medical Council Act, 1956 — Section 10 A, 10 C, 19 A, 33
Karnataka State Universities Act, 1976 — Section 53 (10)

Citation : (1997) ILR (Kar) 2934 : (1999) 3 KarLJ 363

Hon'ble Judges : R.P. Sethi, C.J.; S. Rajendra Babu, J

Bench : Division Bench

Advocate : Sri Vijaya Shankar, A.G. and Sri K. Viswanath, High Court Government Pleader, for the Appellant; Sri D.V. Shylendra Kumar, Central Government Standing Counsel, Sri R.N. Narasimhamurthy for Sri R.A. Chandrashekara Reddy, Sri Zahedulla Mecca, Sri A. Lobo, Sri L.M. Chidanandayya, M/s. Shetty and Hegde, Associates, Sri Ashok Haranahalli, Sri M.V. Sheshachala, Sri K.G. Raghavan, Sri M.R. Naik, Sri K.S. Desai, Sri M. Pappanna, Sri G.K. Shevgoor, Sri Ashok B. Hinchigeri, M/s. Vagdevi, Associates, Sri D.S. Hosmath, Sri Khaleemulla Shariff, for the Respondent

Judgement

S. Rajendra Babu, J.—The genesis of this litigation is the receipt of a letter from R. Shiva Bhaskaraswamy bringing to the notice of this Court a letter sent by the Secretary, Medical Council of India on 21-11-1994 to the Government of Karnataka, that certain medical colleges in Karnataka are admitting students in excess of the intake fixed by the Medical Council of India and sought for directions to take corrective steps to reduce the number of admissions in excess of the number approved by the Medical Council of India. That letter sent by R. Shiva Bhaskaraswamy was treated as a writ petition by registering it as such in public interest. On 26-8-1996, learned Single Judge made an order directing the State Government to ensure no medical or dental college admits any students for which the seats do not stand the test of mandatory provisions of Sections 10-A to 10-C of the Medical Council Act, 1956 and the Dental Council Act. Against that

order, a writ appeal was preferred in Writ Appeal No. 7913 of 1996 which was allowed and the order made was set aside with an observation that, before passing further orders, reasonable opportunity may be afforded to the State of Karnataka.

2. The Registrar-Vigilance of this Court was appointed as an Enquiry Officer for the purpose of collecting data from the State Government and from the Medical and Dental Colleges in the State of Karnataka relating to the admission capacity. A report was made by the said Registrar. Based on the data furnished by him in the report, learned Single Judge disposed of the writ petition by an order made on 20-9-1996. In the course of the said order, the following findings have been given:

(1) that Section 53(10) of the Karnataka State Universities Act, 1976 and Section 4(1)(b) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 which empowers the State Government and the Universities in the State to determine the admission capacity of the colleges are void and inoperative;

(2) that the power in relation to fixing the admission capacity for medical colleges is governed only by the provisions of Sections 10-A to 10-C of the Medical Council Act, 1956;

(3) that no medical college can admit any student in excess of the capacity determined by the Medical Council and approved by the Central Government;

(4) that regulations framed under Sections 19A and 33 of the Medical Council Act are mandatory in nature;

(5) that the Central or State Government cannot exercise executive powers under Article 73 or 162 of the Constitution of India irrespective of any aspect of medical education for which provisions have been made under the Central or State legislature; and

(6) that the extraordinary jurisdiction of High Court under Article 226 does not extend to regularising and approving admissions in excess of permissible intake.

3. Along with this appeal filed by the State, we have heard several other appeals challenging the same order made by the learned Single Judge. In fact, some of the learned Counsel went to the length of submitting that the letter addressed by R. Shiva Bhaskaraswamy which resulted in the registration of the writ petition itself is not bona fide and the identity of the writer of the letter is not known and in the absence of which it was neither expedient nor proper for the learned Single Judge to have embarked upon a roving or fishing enquiry into the affairs of the medical and dental colleges in the State of Karnataka and when no material was forthcoming in the letter, it was wholly unnecessary for the learned Single Judge to have appointed the Registrar-Vigilance of this High Court to enquire into the matter and gather necessary data to enable the Judge to pass an order in the matter. It was further submitted that the learned Single Judge

has unnecessarily enlarged the scope of enquiry in the matter and all that was needed to be considered was whether the admissions made in the medical or dental colleges was within the permissible limits or not and in the event if there has been any excess admissions beyond the quota fixed, what action should be taken. It was criticised at the Bar the manner in which the learned Single Judge has researched to project a novel thesis on the principles applicable in the matter of admission in colleges; and the scope of judicial review by Courts in such admissions, exhorting thorough overhaul by adopting new standards not only by the Government, Universities and medical/dental colleges but also by the High Court. It was very vehemently contended that the whole exercise was unnecessary, and unwarranted in the circumstances of the case. It was stated that the letter of the Medical Council of India dealing with intake in medical colleges was being appropriately dealt with by the concerned parties including State Government and respective colleges and before either Medical Council of India or Central Government on recommendation of Medical Council of India could take any action, the learned Single Judge, suo motu, need not have interfered with that process by judicial imprimatur preempting the whole process.

4. At the very outset, we may make it clear that we do not propose to enquire into the question whether the letter addressed by Sri R. Shiva Bhaskaraswamy was bona fide or whether his identity is established inasmuch as the learned Single Judge has found, on investigation of facts, that there are certain irregularities in the matter of admissions in medical/dental colleges in the State of Karnataka. In our view, such an exercise would be futile as at whose instance such illegalities or irregularities which affect public interest are brought to the notice of the Court would be immaterial and once the Court becomes aware of such illegalities or irregularities which affect public interest, it becomes the duty of the Court to set right the same. Nor, do we propose to express any opinion on the various aspects considered by the learned Single Judge except those which are germane to the decision of the present appeal and we refrain from expressing our views on several aspects considered by the learned Single Judge. Though for the purpose of convenience we take up W.A. 8413 of 1996 for consideration, by this order we propose to deal with the contentions raised in the other appeals also.

5. There are 19 medical colleges in the State out of which two come under the Deemed University Manipal Academy of Higher Education. Thus, in the present case, we are concerned with 17 medical colleges out of which 4 are Government colleges which have been established prior to 1-6-1992. The Medical Council had fixed the minimum standard of medical education laid down in the statutory regulations fixing the total admission capacity of the 17 medical colleges for I year MBBS course at 2,005 for the academic year 1993-94 and 1994-95. The same was increased by the State Government to 2,814 and 2,945 respectively in purported exercise of its powers u/s 53(10) of the Karnataka State Universities Act, 1976 read with Section 4(1)(b) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. On 21-11-1994, the Medical Council of

India addressed a letter to all concerned including the State Government which has been in extenso quoted by the learned Single Judge in the course of his order. The Council, in the course of its letter, indicated the sanctioned strength by the Council or by the State and the information sent regarding admission made by the authorities in the Colleges for the year 1993-94 and stated that the matter had been placed before the Executive Committee of the Council, at its meeting held on 27-8-1994. The Executive Committee decided to request the State Government to reduce the excess number of admissions being in the State Medical Colleges whether Government or private to the number as approved by the Medical Council of India. In that regard, they drew the attention to the provisions of Sections 10A, 10B and 10C of the Indian Medical Council (Amendment) Act, 1993 and therefore, asked the Government to take corrective steps and to reduce the excess number of admissions being made in the State Medical Colleges to the number as approved by the Council. The Chief Minister of the State of Karnataka had a meeting with the President of the Council thereafter addressed a letter to the Union Health Minister on 25-4-1995. That letter is also set out in full by the learned Single Judge in the course of his order but, we shall advert to certain aspects therein which are relevant for our purpose. It was stated that, the State had been experiencing a major problem ever since the MCI (Amendment) Act came into effect during the latter part of 1992. Prior to that the State Government had the authority to fix the intake in the medical colleges though there used to be some differences between the State Government approved intake and that by the Council and the former was usually higher. In respect of most of the colleges, the State Government had not increased the intake ever since the new ordinance came into force. It was pointed out that if suddenly the intake level of each college is reduced to that prescribed by the Council, there would be a drastic fall in the number of seats available in the medical colleges resulting in a great deal of resentment to the student community at large principally and to the Management incidentally. The Chief Minister further referred to his discussion with the President, Medical Council of India and also stated that the Council would now be in a better position to appreciate the difficulties experienced by the State and assured that the State would henceforth not increase any further intake in any private medical colleges in the State without approval of the Central Government and it is imperative that the present level of intake should be allowed to continue in these colleges and in the meanwhile, asked each of the colleges to attain within a fixed time frame, the appropriate level of facilities in accordance with the Council norms. On 24-8-1995, a letter was sent by the Central Government to the State Government in regard to the ratification of excess admission in the medical colleges in the State of Karnataka. The Health Ministry pointed out that in accordance with the Indian Medical Council (Amendment) Act, 1993 and the scheme notified by the Medical Council of India in the notification dated 20-9-1993, a proposal to increase the admission capacity is required to be submitted to the Central Government in the prescribed form. Therefore, the State Government was asked to send proposals to increase the admission

capacity college wise to the Central Government complete in all its respects. Though there was some dispute as to the receipt of the said letter by the State Government, it was however, made clear to the Court that steps had been taken to issue instructions to all medical colleges to come up with appropriate proposals for increasing the admission capacity in the manner required by the Central Government. On the basis of this material, learned Single Judge noticed the following factual position:

1. The State Government was fully aware of the statutory requirements as envisaged under the Central Amendment Act, 1993 which had come into force from 27-8-1992.
2. The State Government had fixed the admission capacities of intake of medical colleges in excess of the one fixed by the Council pursuant to the inspection conducted on its directions.
3. The infrastructure available in the medical colleges were not befitting the admission capacity fixed by the State Government and the same was assured to be attained within a fixed time frame.

It is also noticed by the learned Judge that when the request of the Medical Council had not been properly responded to by adhering to the appropriate standards of providing the requisite infrastructure, the Council was left with no option but to ask the Central Government to take penal action u/s 19 of the Central Act so as to de-recognize the medical colleges in the State covered by those provisions. Learned Single Judge noticed certain ground realities by referring to the decisions in Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, , and Miss. Mohini Jain Vs. State of Karnataka and others, , and the menace of capitation fee. Learned Single Judge thereafter referred to the details of the academic year wise intake fixed by the State Government from 1985-86 onwards right upto 1995-1996. He graphically described that the reasons prevailing with State Government for increasing and subsequently maintaining the intake/admission capacity might be many except the statutory requirement of maintaining the minimum standards of medical education. He also noticed that pursuant to the decision of the Supreme Court in Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , excess admissions were also sought to be justified on the basis of backlog vacancies, the idea being that in the vacancies arising either on transfer or on discontinuance of students of certain years, they should be permitted to fill up by admitting equal number of students during any subsequent years in excess of the approved intake of such subsequent year and it would not be illegal. The logic advanced behind this adjustment appears that the total number of students in the college remains to be the same at the intended level on taking into consideration the full admission strength and the infrastructure available. The Government's view in the matter was that further approval of the Government in such cases should not be necessary. However, the approval of the Medical or Dental Council of India had to be obtained for such cases and the concerned

University may also ratify such excess admissions made against the vacancies caused by departure of the originally admitted students either on transfer or by discontinuance. Thereafter, a Circular was issued by the Government on 2-8-1995 stating that this portion was deleted to which we have adverted earlier. Even in such cases, this Court took the view that it was permissible for them to obtain permission in respect of such backlog admission from the concerned Dental or Medical Council of India which is the competent authority. However, the records for the academic year 1993-94 to 1995-96 would reveal that certain admissions had been approved as backlog vacancies. Learned Judge pointed out that the admissions given against the alleged backlog vacancies would tantamount to excess admission and were hit by the provisions of Section 10A of the Central Act. However, subsequently the Government filed a memo that by a circular it had decided to discontinue the practice of allowing backlog vacancies in I year MBBS and I Year BDS course in various private colleges against the vacancies caused by departure of originally admitted students for one reason or the other to be filled up.

6. In view of the position that the State Government had taken necessary steps regarding backlog vacancies we need not decide any question arising thereto. The action taken for filling so-called backlog seats is subject-matter of earlier litigation and therefore, we refrain from dealing with this aspect.

7. The learned Single Judge after adverting to the various provisions of the Central and State Legislature in regard to the medical and dental education noticed that all the colleges in the State had been established prior to 1-6-1992. Therefore, the question that fell for consideration was as to the ascertainment of the legally permissible "admission capacity" in each college. Section 10A of the Medical Council Act begins with a non obstante clause so as to override other provisions of the Act or any other law for the time being in force and bars a medical college from increasing its "admission capacity" in any course of study or training (including postgraduate course of study or training) except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Explanation 2 of Section 10A elaborates "admission capacity". Admission capacity is understood therein in relation to any course of study/training including postgraduate course in a medical college as the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training. The clear effect of the said provision is that, no medical college can increase its admission capacity in any course of study and training except with the previous permission of the Central Government obtained in accordance with the provisions of sub-section (2) of Section 10A. The learned Judge after analysing the provisions thereof stated that the Parliament has simultaneously taken over three more aspects of medical education into fore with effect from 1-6-1992 and State Legislature is completely denuded to have any authority in respect of that and they are-

1. Establishment of new medical colleges,

2. Opening of new or higher course of study of training in the colleges, and
3. Increasing admission capacity of medical colleges established prior to 1-6-1992.

The learned Judge is of the view that the said three aspects are part of the same parliamentary scheme and are subject to same constitutional limitations and on the question of increasing admission capacity, it was applicable even to colleges which had been established prior to 1-6-1992 and the power to fix the admission capacity of medical colleges would lie exclusively with the Central Government inasmuch as the provisions contained in the State enactment are inconsistent with the Central Government and have become void and inoperative.

8. According to the learned Judge, the admission capacity which is fixed by the Council from time to time alone will form the basis for determining any increase therein for the purpose of Section 10A requiring previous permission from the Central Government and any violation thereof will visit the consequences envisaged u/s 10B of the Central Act.

9. Learned Single Judge advertent to the question as to whether the admission capacity of a medical college is a one time exercise or whether it could be done so from time to time more than once held that even on grant of permission by the Central Government to increase the admission capacity, it was open to the Council to inspect the said college and if on such inspection it is found that the infrastructure in that college has fallen short of the requirement standard entitling it to maintain the approved level of admission capacity then the college cannot be permitted to admit students beyond that level unless it undertakes the statutory process provided u/s 10-A(1) seeking approval of the Central Government for increasing its admission capacity. The learned Judge also held that the Explanation 2 to Section 10A would be the basis for initiating action under the provisions of Section 10-A(1)(b)(ii) of the Act on the basis of inspections conducted prior to 1-6-1992. Learned Judge also adverted to the nature of the regulations framed under the Central Act, the functions and powers of the Council and State Government under the Act and whether the Central or State Government can exercise executive powers in relation to any aspect of medical education and nature and powers of High Court in regard to the admission capacity or eligibility and regulation of the process of admission. Detailed reference to views, finding on fact and law of the learned Single Judge has become necessary in the absence of detailed pleadings as the proceedings had been initiated as public interest litigation and there is no other manner of knowing the mind of the learned Single Judge except through analysis of his judgment.

10. As was done before the learned Single Judge, in this appeal the stand taken by the State Government and the respective colleges is that-

1. Medical Council of India has no statutory authority under the Indian Medical Council Act, 1956 or any other existing law to fix the admission capacity of the

medical colleges;

2. The provisions of Section 10A, 10B or 10C of the Indian Medical Council Act do not vest any power in the Council to determine the admission capacity of the medical colleges;

3. Even after 1-6-1992 or 27-8-1992, the power to fix the admission capacity of a medical college can be traced only to the State Government u/s 53(10) of the Karnataka State Universities Act, 1976 read with Section 4(1)(b) of the Capitation Fee Act and no other authority, may be the Central Government or the Medical Council has any say in the matter.

The letter of the Medical Council of India has been set out by the learned Single Judge in the order under appeal and so we do not propose to set out the same. The gist of this letter is that the medical colleges in Karnataka are admitting students in excess of the admission capacity fixed by the Medical Council.

11. Under the Karnataka State Universities Act, the University has the powers to grant recognition to institutions and to prescribe the maximum number of students to be admitted to a course of study. Section 53(10)(b) of the Karnataka State Universities Act provides that the maximum number of students to be admitted to a course of study shall not exceed the intake fixed by the University or the Government as the case may be and any admission made after this section came into force in excess of the intake shall be invalid. The Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 also provides for fixing admission capacity in the professional colleges.

12. In *Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others*, , the Supreme Court had occasion to consider the relative scope of Entries 63 to 66 of List I and Entry 25 of List III of Schedule 7 and it has been stated that the legislative power in relation to education was earlier distributed in all the three legislative lists in the VII Schedule to the Constitution. Parliament is conferred with legislative power in respect of matters originally specified in Entry 11 of List II and now Parliament and State Legislature have concurrent power in respect of matters specified in Entry 25 of List III. By Constitution (42nd Amendment) Act, 1976, Entry 11 of List II has been deleted and Entry 25 in List III has been enlarged to cover matters which were earlier specified in Schedule VII in Entry 11 of List II. In view of the said amendment legislative power in respect of education is now conferred exclusively on Parliament in respect of matters specified in Entries 63 to 66 of List 1 and concurrently on Parliament and State Legislature in respect of matters specified in Entry 25 of List III. Since Parliament and State Legislatures are empowered to make laws on the same subject, the possibility of repugnancy between the law made by the Parliament and the law made by the State under the said entry cannot be excluded. Article 254 of the Constitution deals with such a situation. Referring to the decision in *State of Orissa Vs. M.A. Tulloch and Co.*, , the Supreme Court stated that the test of two legislations containing contradictory

provisions is not the only criterion of repugnancy. Repugnancy may arise between two enactments even though the obedience of each of them is possible without disobeying the other, if a competent legislature with a superior efficacy expressly or impliedly evinces by legislation an intention to cover the whole field. Therefore, the Supreme Court proceeded to find out whether in enacting Section 10A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to the establishment of new medical colleges in the country and the subject-matters mentioned therein. It was noticed therein that Section 10A seeks to achieve an object stated in the statement of objections and reasons amended to the Bill by prescribing in sub-section (1) that no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Permission is required for opening a new or higher course of study or training or any increase in the admission capacity in the course of study or training in the medical colleges. Section 10-A(2) requires that every person or medical college shall, for the purpose of obtaining permission under sub-section (1) thereof submit to the Central Government a scheme in the prescribed form and the said scheme is to be referred to the Medical Council for its recommendations. Under sub-section (3), the scheme is required to be considered by the Medical Council of India having regard to the factors enumerated in sub-section (7). Thereafter, the Medical Council submits the scheme together with its recommendations to the Central Government. Under sub-section (4), the Central Government can, after considering the scheme and the recommendations of the Medical Council and if necessary after obtaining such other particulars as may be deemed necessary from the person or college concerned, and having regard to the factors stated in sub-section (7), either approve with such conditions if any as it may consider necessary or disapprove the scheme and any such approval shall be a permission under sub-section (1). Under sub-section (5), the scheme shall be deemed to have been granted where no order passed by the Central Government has been communicated to the person or college within one year from the date of submission of the scheme to the Central Government under sub-section (2). The factors that are required to be taken into consideration by the Medical Council and the Central Government u/s 10-A(7) include the capacity to offer minimum standard of medical education as prescribed by the Central Government, adequacy of financial resources, necessary facilities in respect of staff, equipments of medical college, adequate hospital facilities, arrangement or programme to impart proper training to students and the requirement of manpower in the field of practising medicine. Thus, it appears that by Section 10A Parliament has made a complete exhaustive provision covering the entire field of establishing a new medical college. Therefore, no further scope is allowed for the operation of the State legislature in the said field which is fully covered by law made by the Parliament. The provisions of the State Act, requiring prior permission of the State Government for establishing a college is repugnant to Section 10A inserted in the Indian Medical Council Act which prescribes condition for establishing a new medical college in the country. The said repugnancy is

however confined to the field covered by Section 10A namely, establishment of new medical college. After the enactment of Section 10A by the Central Government, the Medical Council has issued a notification on 20-9-1993 regarding establishment of new medical colleges, opening of higher course of study and increase in admission capacity in the medical colleges wherever a scheme for application for permission of the Central Government to establish new medical colleges has been made. In the scheme, the qualifying criterion for applying for permission to establish medical colleges have been made. An essentiality certificate has to be given regarding the desirability and feasibility of having the proposed medical college at the proposed location and that adequate clinical material is available as per the Medical Council of India requirements. The said certificate should be obtained from the respective State Government or the Union Territory. The scope of interference by the State in these matters after the enactment of Section 10A and on coming into force of the regulations issued on 20-9-1993 is limited and it is no longer open either to the State or the colleges concerned to contend that they can increase the seats in the colleges without obtaining approval of the Central Government or recommendations of the Indian Medical Council. In *Osmania University Teachers' Association Vs. State of Andhra Pradesh and Another*, , after examining the various entries in relation to education, it has been held that the test to be adopted is one of inconsistency and not that of occupied field which was applied in earlier decisions.

13. Sri Vijaya Shankar, learned Advocate General strongly however, relied upon a decision in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, . He contended that the Supreme Court after examining the scope of the Entries 25 of List III and 63 to 66 of List I held that the subject-matter of education including medical education is in the concurrent list. But, only a portion of it insofar as it falls under Entries 63 to 66 of List I has been scooped out of it and placed in List I and this only means that the area occupied by Entry 63 to Entry 66 of List I has been properly delineated to find out how much is taken away from Entry 25. Whenever a question arises whether a particular legislation made by the State with reference to Entry 25 of List III impinges upon the aforesaid entries in List I, one has to apply the doctrine of pith and substance to determine whether the Act impinges upon the field reserved to the Parliament. He submitted that State is allowed to regulate the admission policy and at the same time adhere to the standard determined by the Indian Medical Council and in view of this explanation of the provision under the Constitution, it is no longer open to take the view that in respect of admissions in colleges it is not an area which could be dealt with by the Central Government and therefore, the power of the Indian Medical Council in regard to prescription of minimum standards is only advisory in nature and not of binding character. He therefore submitted that the provisions of Section 10A of the Indian Medical Council Act cannot override the view expressed by the Supreme Court in the aforesaid decision. If therefore, the matter is examined in the light of the enunciation of law in *Ajay Kumar Singh's* case, he submitted that the view taken by the learned Single Judge cannot be

sustained at all.

14. We are afraid the argument advanced by the learned Advocate General is plainly untenable. In Ajay Kumar Singh's case, the question that fell for consideration was only regarding process of admission and permissibility of providing reservations in terms of Article 15(4) of the Constitution in postgraduate medical courses and not fixation of admission capacity. Within the rules admission capacity regulating admissions could be made. Incidentally a contention was raised that the regulations made by the Indian Medical Council prohibits reservation of seats in postgraduate medical courses of any kind whatsoever, and the regulations being statutory prevails over the executive orders made by the Government. In dealing with such a question, no question arose for decision as to the scope of Section 10A of the IMC Act. The matter concerned only regarding the selections made pursuant to the postgraduate medical admission test of 1992, and the Supreme Court had no occasion to examine the scope of Section 10A of the Act at all. Therefore, all that was stated in connection with this provision was that by IMC (Amendment) Act, 1993 which was brought into effect from 27-8-1992, Sections 10A, 10B and 10C were added. This section deals with establishment of new medical colleges or opening of new or higher course of study or training in existing medical institutions. Nothing more was said about this provision, the interpretation of and the meaning to be attributed to the various expressions in the aforesaid section did not arise for consideration at all. In the result the contentions that even after introduction of Sections 10-A to 10-C to Indian Medical Council Act, State enactments would prevail are rejected.

15. The aforesaid conclusion would not fully decide the cases on hand inasmuch as all the colleges have been established prior to 1-6-1992 and on the basis of the law prevalent then, admission capacities have been fixed under the State enactments. The scope of the powers of Indian Medical Council came up for consideration in State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others, . The position in law then was that regulations could be framed u/s 19A of the Indian Medical Council Act and such regulations are directory in nature as held by the Supreme Court. The object of the aforesaid provision was only to lay down the standards of education and the regulations framed therein are directory in nature. Therefore, prior to coming into force of the said Amendment Act, the position is clear that it is not permissible for the Medical Council to prescribe or regulate admission to the colleges. Nor, would it be correct to say that after coming into force of the Act, it is still open to the State or the University to fix either under the Capitation Fee Act or the Universities Act, the intake capacity of the medical colleges.

16. The medical colleges in the State had been established prior to 1-6-1992 and therefore, in the present cases, the criteria for application of Section 10A of the IMC Act is the ascertainment of the legally permissible admission capacities of each of the colleges. It is clear from the provisions of Sections 10-A(1)(b)(ii) and

10-C(3) no medical college can increase the admission capacity in any course of study or training except with the previous permission of the Central Government as provided in Section 10A(2) to (8) of the IMC Act. The Central enactment not only deals with the establishment of medical colleges after 1-6-1992 but also opening of new or higher course of study or training in the medical colleges established before 1-6-1992 and increase in admission capacity of medical colleges established before 1-6-1992. Admission capacity for purpose of increase or decrease in each of the colleges, has got to be determined as on or before 1-6-1992 with reference to what had been fixed by the State Government or the admission capacity fixed by the medical colleges and not with reference to the minimum standard of education prescribed u/s 19A of the Act which were only recommendatory as held in Nivedita Jain's case, supra.

17. We have pointed out that prior to coming into force of the IMC (Amendment) Act, neither Central Government nor the Medical Council of India had any powers to fix the admission capacity. It is only on coming into force of the Act, such powers are available to the IMC. Therefore, whatever minimum standards of medical education may have been prescribed u/s 19A of the Act, prior to coming into force of the Indian Medical Council (Amendment) Act would be only recommendatory in character by way of guidelines. It is only after the IMC (Amendment) Act has come into force if any determination has been made as to the admission capacity, that admission capacity will have to be taken into consideration. Thus, whatever prescriptions had been made by the State Government prior to coming into force of the Act will form the starting point (or bench mark as noticed by the learned Single Judge) for the purpose of Section 10A of the Central Act. This position also becomes clear when we read Explanation 2 to Section 10-A(1). Explanation 2 reads as follows;

"For the purpose of this section, admission capacity in relation to any course of study or training in medical college means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training".

Fixing the number would arise only after the Indian Medical Council was empowered to do so. It cannot be read into the said provision that what standards had been prescribed by it u/s 19A of the Act would be the standard for the purpose of determining the admission capacity which are held to be only in the nature of guidelines or recommendatory in nature until the coming into force of the IMC (Amendment) Act. That admission capacity is to be determined with reference to Section 10A and not with reference to Section 19A of the Act. But, in determining whether the admission capacity is correct or not and whether it conforms to the standard prescribed by the Indian Medical Council or not, now it is certainly open to the Indian Medical Council to make inspection from time to time and determine whether the admission capacity of each college would conform to the standard prescribed by them, and thereby it can either decrease or increase as the case may be after following appropriate procedure thereto. If

this is the correct interpretation to be placed on the provisions of the enactments now the question that arises for consideration is what would be the position in relation to colleges which have been established prior to 1-6-1992. The admission capacity in those cases had been fixed under the relevant State enactments. As long as the State enactments were not inconsistent with the Central enactments as noticed by the Supreme Court, it was permissible for them to fix such admission capacity. If on the basis of such fixation admissions have been made, we do not think such admissions can become irregular now. Future admissions will however, have to be regulated on the basis of the capacity fixed or determined by the Indian Medical Council. To this limited extent, in our view, these appeals will have to be allowed and the order made by the learned Single Judge to that extent will therefore, have to be modified.

18. The upshot of the above discussions will lead to the following conclusions:

(i) Prior to introduction of Sections 10A and 10C to IMC Act, neither the Central Government nor Indian Medical Council could fix the admission capacity and determination of admission capacity in the medical colleges were governed by provisions of Section 53(10) of the Karnataka State Universities Act and Section 4(1)(b) of Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. After introduction of Sections 10-A to 10-C to IMC Act, the enactments of the State will yield to the provisions of the IMC Act to the extent of repugnancy. Therefore it is unnecessary to declare the same to be void.

(ii) The exercise of the power to fix admission capacity is under Sections 10-A to 10-C of the IMC Act. The Central Government on advice of Indian Medical Council can rely upon regulations framed under Sections 19A and 33 of IMC Act.

(iii) There is no need to dilate on the scope of powers under Article 226 of the Constitution of India in the matter of admission to medical or other colleges and such questions would be decided as and when the occasion arises depending upon facts and circumstances of each case. Whether any equity should be extended or should provisions of law be rigorously adhered to are all matters over which no hard or fast rule can be laid down in vacuum.

It is perilous to hazard general statements of law without reference to context of matter. We modify the order made by the learned Single Judge accordingly. To the extent we have not expressed our views, we should not be understood as having either approved or disapproved the findings or views expressed by learned Single Judge in the order under appeal.

19. As we have held the provisions of Sections 10-A to 10-C are prospective, admission capacity of medical colleges have to be determined by the Central Government on the basis of the advice of the Indian Medical Council in the light of what we have stated above after giving due opportunity to each of the colleges and in the manner provided by law as interpreted by us.

20. Appeal filed by the State stands allowed in part and order made by the

learned Single Judge in the writ petition shall stand modified accordingly.