Medical Council Of India vs State Of Karnataka And Others on 16 July, 1998

Equivalent citations: AIR 1998 SUPREME COURT 2423, 1998 (6) SCC 131, 1998 AIR SCW 2418, (1998) 3 SCR 740 (SC), (1998) 5 JT 40 (SC), 1998 (3) SCR 740, 1998 (2) UJ (SC) 343, 1998 UJ(SC) 2 343, 1998 (4) SCALE 161, (1999) 1 PAT LJR 10, (1998) 3 SCT 394, (1998) 3 SCJ 18, (1998) 5 SERVLR 4, (1998) 6 SUPREME 20, (1998) 4 SCALE 161

Author: D.P. Wadhwa

Bench: K.T. Thomas, D.P. Wadhwa

PETITIONER:
MEDICAL COUNCIL OF INDIA

Vs.

RESPONDENT:
STATE OF KARNATAKA AND OTHERS

DATE OF JUDGMENT: 16/07/1998

BENCH:
K.T. THOMAS, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T D.P. WADHWA, J.

Leave granted.

A Division Bench of the Karnataka High Court has put a question mark on the authority of the Medical Council of India (for short, the ' Medical Council') - the appellant - in its judgement dated July 16, 1997 to fix intake for admission of students to various medical colleges in the State of

Karnataka. Medical Council is aggrieved by that part of the impugned judgement where the Division Bench held that prior to insertion of Sections 10A, 10B, and 10C in the Indian Medical Council Act, 1956 (for short, the Medical Council Act') by the Amending Act 31 of 1993 neither the Central Government nor the Medical Council could fix the admission capacity in the medical colleges in the State and that this authority to determine the admission capacity in the medical colleges vested in State by virtue of tow State enactments, namely, Karnataka State Universities Act, 1976 (for short, 'Karnataka Universities Act') and Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984 (for short, 'Karnataka Capitation Fee Act'). The Division Bench, however, held that after the amendment of the Indian Medical council Act by insertion of Sections 10A, 10B and 10C, the two State enactments would yield to the extent of repugnancy and that now the power to fix admission capacity rests with the Medical Council. The Division Bench said that admission capacity for purpose of increase or decrease in each of the college, has got to be determined as on or before June 1, 1992 with reference to what had been fixed by the State Government or that foxed by the medical colleges and not with reference to the minimum standard of education regulations prescribed under Section 19A, of the Medical Council Act by the Medical Council which it said were only "recommendatory" as held in State of Madhya Pradesh and anr. v. Kumari Nivedita Jain and ors.(1981 (4) SCC 296). Thus, according to the Division Bench future admission will, however, have to be regulated on the basis of the capacity fixed or determined by the Medical Council as provisions of Sections 10A, 10B and 10C are prospective.

State of Karnataka has also filed appeal. It felt aggrieved by that part of the impugned judgment of the Division Bench where it scuttled the powers of the State to fix admission capacity to the medical colleges. Stand of the State is that Section 10A is applicable only when it comes to increase the existing admission capacity in the colleges and that the intake capacity already fixed by the State under its statutory powers could not be reduced.

In the third appeal filed by the Rajiv Gandhi Dental College and which pertains to Dental Colleges under the provisions of the Dentists Act, 1948, there is similar challenge to the authority of the Dental Council of India to fix the intake of admission of students to Dental Colleges. The provisions of this Act are in peri materia to that of the Indian Medical Council Act and decision in the appeal filed by the Medical Council of India would be applicable to the appeal filed by Rajiv Gandhi Dental College.

Impugned Division Bench decision was rendered in an appeal against the judgment dated September 20, 1996 of a single judge (G.C. Bharuka, J.) of the High Court in a writ petition filed as a Public Interest Litigation. Learned Single Judge considered the whole spectrum of law relating to admission in Medical Colleges in the State and held as under:

"I s.53(10) of the State Universities Act and Sec.4(1)(b) of the State Capitation Fee Act empowering the universities and/or the State Government to fix or increase intakes of the medical colleges being repugnant to Sections 10A, 10B and 10C of the Central Act, are held as void and inoperative.

II. The power in relation to fixation and/or increase of the admission capacities of the medical colleges has to be governed strictly and exclusively under the provisions of Sec.10A/10C of the

Central Act.

III. No medical college can admit any student in excess of its admission capacity fixed by the Council subject to any increase thereof as approved by the Central Government under and in accordance with the provisions of Sec.10A or Sec.10C of the Central Act.

IV. The regulations framed on the aspects of medical education referred to in Secs.19A and 33 of the Central Act are mandatory in nature."

The State of Karnataka went in appeal against the judgment of the single Judge which, as noted above, was partly allowed. In the appeal , the Divisions Bench took the view that Sections 10A, 10B and 10C of the Act have only prospective operation. While the Medical Council and the Central Government contend that learned single Judge was correct in this approach to the matter in controversy, the State of Karnataka says that introduction of Sections 10A, 10B and 10C in the Act made no difference to its authority to regulate admission to Medical Colleges in view of the judgement of this Court in A.K. Singh vs. State of Bihar [(1994) 4 SCC 401] and that power under Section 10A of the Medical Council Act was confined only to increasing the existing admission capacity and the intake capacity already fixed by the State under its statutory powers could not be reduced.

When the matter came up before this Court in special leave petition (SLP No.14839/97) filed by the Medical Council, this Court, while issuing notice, stayed the impugned judgment of the Division Bench. In the appeal filed by the Rajiv Gandhi Dental College, it was also directed that the State would confine the admissions to the dental colleges to the intake capacity as fixed by the Dental Council.

Before we consider the rival contentions, we may set out the relevant provisions of law but even before that we take note of the observations of this Court in State of Kerala vs. Kumari T.P. Roshana & Anr. [(1979) 1 SCC 572] where the Court said as under :-

> "The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus there is an overall invigilation by the Medical Council to prevent sub- standard entrance qualifications for medical courses."

The Indian Medical Council Act, 1956 Sections 2 of the Medical Council Act defines various terms used in the Act. "Approved institution" means a hospital, health centre or other such institution recognised by a University as an institution in which a person may undergo the training, if any, required by this course of study before the award of any medical qualification to him;

"Council" means the Medical Council of India constituted under this Act; "medical institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine; "recognised medical qualification"

means any of the medical qualifications included in the Schedules; "University" means any University in India established by law and having a medical faculty.

"Sec. 10-A. Permission for establishment of new medical

college, new course of study, etc.-

(1) Notwithstanding anything contained in this Act or any other law for the time being in force-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training);

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1.- For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2.- For the purposes of this action, "admission capacity", in relation to any course of study or training (including post-

graduate course of study or training) in a 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.

(2)(a) Every person or medical college shall, for the purpose of obtaining permission under sub-

section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2), the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may,-

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to 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):

> Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard.
>
> Provided further that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).
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> (5) ...
>
> (6) ...
>
> (7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-
>
> (a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be, under section 20 in the case of post-graduate medical education;
>
> (b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its

admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed."

"Sec.10.B Non-recognition of medical qualifications in certain cases.-

(1) ...

(2) ...

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation.- For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

Sec.10-C. Time for seeking permission for certain existing medical colleges, etc.-

(1) If after 1st day of June, 1992 and on and before the commencement of the Indian Medical Council (Amendment) Act, 1993 any person has established a medical college or any medical college has opened a new or higher course of study or training or increase the admission capacity, such person or medical college, as the case may be, shall seek, within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1993, the permission of the

Central Government in accordance with the provisions of section 10A.

(2) If any person or medical college, as the case may be, fails to seek the permission under sub-

section (1), the provisions of section 10B shall apply, so far as may be, as if, permission of the Central Government under s10A has been refused."

Under Section 11 of the Medical Council Act, qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Medical Council Act. Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Medical Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein. Under Section 16 every university or medical institution in India which grants a recognised medical qualification shall furnish such information as the Medical Council may, from time to time, require as to the courses of study and examinations to be undergone for the purpose of attaining qualification and other details requisite for obtaining such qualification. Under Section 17 of the Medical Council Act, the Executive Committee of the Medical Council shall appoint medical inspectors to inspect any medical institutions, college, hospital or other institution where medical education is given or to attend any examination held by any University or medical institution for the purpose of recommending to the Central Government recognition of medical institution. Similarly, the Medical Council is authorised to appoint visitors for the same purpose. The inspectors and the visitors are required to report on the adequacy of the standards of medical education including staff, equipment, accommodation, training and other facilities prescribed for giving medical education or on the sufficiency of every examination which they attend. Then come Sections 19 and 19A and which have been set out above providing for laying down minimum standards of medical education and withdrawal of recognition. These are as under :

> "Sec.19.Withdrawal of recognition.- (1) When upon report by the Committee or the visitor, it appears to the Council-
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> (a) that the course of study and examination to be undergone in, or the proficiency required from candidates at any examination held by, any University or medical institution, or
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> (b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such university or medical institution or in any College or other institution affiliated to that University, do not conform to the standards prescribed by the Council the Council shall make a are presentation to that effect to the Central Government.
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> (2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or medical institution is situated and the State Government shall forward it along with such remarks as it may

choose to make to the University or medical institution, with an intimation of the period within which the University or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the Central Government.

(4) The Central Government after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognised medical qualification only when granted before a specified date, or that the said medical qualification if granted to students of a specified college or institution affiliated to any university shall be a recognised medical qualification only when granted before a specified date or, as the case may be, that the said medical qualification shall be a recognised medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date.

Sec.19.A Minimum standards of medical education.-(1) The Council may prescribe the minimum standards of medical education required for granting recognised medical qualifications (other than post-

graduate medical qualifications) by Universities or medical institutions in India.

(2) Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall, before submitting the regulations or amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of copies aforesaid.

(3) The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.

Sec.33. Power to make regulations.

The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and, without prejudice to the generality of this power, such regulations may provided for-

(a) to (f) ...

(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of

section 10A;

(fb) any other factors under clause

(g) of sub-section (7) of section 10A;

(fc) the criteria for identifying a student who has been granted a medical qualification referred to in the Explanation to sub-section (3) of section 10B;

(g) to (i) ...

(j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;

(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;

(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations;"

> The Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. This was enacted to prohibit the collection of capitation fee for admission to educational institutions in the State of karnataka. The preamble to the Act recited that collection of capitation fee for admission of students in educational institutions was wide spread in the State and this undesirable practice was not conducive to the maintenance of educational standards beside it was contributing to large scale of commercialisation of education. Educational institution has been defined in clauses (c) of Section 3, which means any institution by whatever name called, whether managed by Government, private body, local authority, trust, University or any other person carrying on the activity of imparting education in medicine or engineering leading to a degree conferred by a University established under the Karnataka State Universities Act, 1976 (Karnataka Act 28 of 1976) and any other educational institution, or class or classes of such institution, as the Government may, by notification specify.
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> Section 4 regulates the admission to educational institutions etc. and is as under :-
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> "4. Regulations of admission to educational institutions etc. - Subject to such rules, or general or special orders, as may be made by the Government in this behalf and any other law for the time being in force, -
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> (1) (a) the minimum qualification for admission to any course of study in an educational institution shall be such as may be specified by -

(i) the University, in the case of any course study in an educational institution maintained by or affiliated to such University:

Provided that the Government may, in the interest of excellence of education, fix any higher minimum qualification for any course of study;

(ii) the Government, in the case of other courses of study in any other educational institution;

(b) the maximum number of students that could be admitted to a course of study in an educational institution shall be such as may be fixed by the Government from time to time;

(2) in order to regulate the capitation fee charged or collected during the period specified under the proviso to section 3, the Government may, from time to time, by general or special order, specify in respect of each private educational institution or call or classes of such institution.

(a) the number of seats set apart as Government seats:

(b) the number of seats that may be filled up by the management of such institution;

(i) from among Karnataka students on the basis of merit, on payment of such cash deposits refundable after such number of years, with or without interest as may be specified therein, but without the payment of capitation fee; or

(ii) at the discretion:

Provided that such number of seats as may be specified by the Government but not less than fifty per cent of the total number of seats referred to in clauses (a) and (b) shall be filled from among Karnataka students.

Explanation. - For the purposes of this section Karnataka students means persons who have studied in such educational institutions in the State of Karnataka run or recognised by the Government and for such number of years as the Government may specify;

(3) an educational institution required to fill seats in accordance with item (i) of sub-clause (b) of clause (2) form a committee to select candidates for such seats. A nominee each or the Government and the University to which such educational institution is affiliated shall be included as members in such committee."

KARNATAKA STATE UNIVERSITY ACT, 1976 "Section 53.

(1) Colleges within the University area may, on satisfying the conditions specified in this section, be affiliated to the University as affiliated Colleges by the University on the recommendations made by the State Government.

(2) A college applying for affiliation to the University shall send an application to the Registrar within the time limit fixed by Ordinances and shall satisfy the Syndicate and the Academic Council.

(a) .....

(b) .....

(c) that the strength and qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction, teaching or training to be undertaken by the college.

(d) That the building in which the college is to be located are suitable and that provision will be made in conformity with the Ordinances for the residence in the college or in lodgings approved by the college, for students not residing with their parents or guardians and for the supervision and welfare of students.

(e) That due provision has been made or will be made for a library.

(f) Where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the Statutes, Ordinances and Regulations for importing instruction in the branch of science in a properly equipped laboratory or museum;

(g) .....

(h) That the financial resources of the college are such as to make due provision for its continued maintenance and efficient working, and

(i) .....

10.(a) No admission of students shall be made by a new college seeking affiliation to any University or by an existing college seeking affiliation to a new course of study to such course, unless, as the case may be, affiliation has been granted to such new college or to the existing college in respect of such course of study.

(b) 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.

(c) No student whose admission has become invalid under (b) shall be eligible to appear not shall be presented by the college to appear at any examination conducted by the University."

Section 33 of the Medical Council Act empowers the Medical Council to frame regulations with the previous sanction of the Central Government to carry out the purposes of the Medical Council Act. In exercise of this power Medical Council framed regulations after approval by the Central Government providing for minimum standard requirements for a medical college adopting admission on the basis of admitting 100 students annually as the base. The regulations are in three parts - Part-I deals with accommodation in the college and its associated teaching hospitals; Part-II deals with staff (both teaching and technical) and Part-III deals with equipment in the college departments and in the hospitals. These regulations are quite in detail. Again under Section 33, the Medical Council framed regulations prescribing qualifications for appointment of persons to the posts of teachers and visiting physicians/surgeons, etc. in medical colleges and attached hospitals for under-graduate and post-graduate teaching. These regulations are also framed after approval by the Central Government. The Medical Council then framed regulations in exercise of power conferred upon it by Section 10A read with Section 33 of the Medical Council Act and with the previous approval of the Central Government. These regulations relate to the establishment of new medical colleges, opening of higher posts of studies and increase of admission capacity of the medical colleges. The regulations came into force w.e.f. September 20, 1993. These regulations provide that maximum number of admission in MBBS course should not exceed 150 annually. It is the Central Government which permits the increase in admission capacity on the recommendation of the Medical Council.

Till January 3, 1977 education was a State subject under Entry 11 in List II (Entry 11 - "education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and Entry 25 of List III"). By the 42nd Constitutional Amendment Act 1976 Entry 11 was deleted and it was placed in the Concurrent List by enlarging the existing Entry 25. Relevant entries 63 to 66 of List I (Union List) and entries 25 and 26 of List III (Concurrent List) in the Seventh are as under :-

> List I (Union List) "63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the [Delhi University; the University established in pursuance of article 371E] any other institution declared by Parliament by law to be an institution of national importance.
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> 64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
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> 65. Union agencies and institutions for -
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> (a) professional, vocational or technical training, including the training of police officers; or
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> (b) the promotion of special studies or research; or
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> (c) scientific or technical assistance in the investigation or detection of crime.

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

List III (Concurrent List) "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 or labour.

26. Legal, medical and other professions."

Scope of Entry 66 of list I was construed by 6 Judge Bench judgment of this Court in The Gujarat University, Ahmedabad vs. Krishna Ranganath Madholkar and others (1963 Supp. (1) SCR 112). The question for determination before the Court was (1) whether the Gujarat University had the power under the Gujarat University Act to prescribe Gujarati or Hindi or both as exclusive medium or media of instructions and examination and (2) whether legislation authorising the University to impose such media was constitutionally valid in view of Entry 66 of List I of the Seventh Schedule to the Constitution. The controversy raised in that case would, however, not survive after the 42nd Amendment when Entry 11 of List II has been deleted. Reading Entry 11 List II as it existed the Court said that power of the State to legislate in respect of education including Universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, is deemed to be restricted. If a subject of legislation is covered by entries 63 to 66 even if it otherwise falls within the larger field of "education including Universities" power to legislate on that subject must lie with the Parliament. Entry 11 of List II and Entry 66 of List I must be harmoniously construed. The two entries undoubtedly overlap: but to the extent of overlapping, the power conferred by Entry 66 of List I must prevail over the power of the State under Entry 11 of List II. It is manifest that excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, science, technology and vocational training of labour. The Court held as under :-

> "The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the co- ordination of such standards either on an All India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is no t possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is to ensure maintenance or improvement of standards. The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest

> the State with the power to legislate in respect of a matter assigned by the Constitution to the union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and paramountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. The validity of the State legislation on University education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the files reserved for the Union under Entry
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> 66. In other words, the validity of State legislation would depend upon whether it prejudicially affects co-ordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of co- ordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Art. 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid."

It further held :-

> "Item No.66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in item 66 or elsewhere in the Constitution which supports the submission that the expression "co- ordination" must mean in the context in which it is used merely evaluation, co-ordination in its normal connotation means harmonising or bringing into proper relation in which all the things co-ordinated participate in a common pattern of action. The power to co-ordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by item 66 List I is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power.
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> There is nothing in the entry which indicates that the power to legislate on co-ordination of standards in institutions of higher education, does not include the power to legislate for preventing the occurrence of or for removal of disparities in standards. This power is not conditioned to be exercised merely upon the existence of a condition of disparity nor is it a power merely to evaluate standards but not to take steps to rectify or to prevent disparity. By express pronouncement of the Constitution makers, it is a power to co-ordinate, and of necessity, implied therein is the power to

prevent what would make co- ordination impossible or difficult.

The power is absolute and unconditional, and in the absence of any controlling reasons it must be given full effect according to its plain and expressed intention."

Mr. Dave appearing for the Medical Council submitted that this Court in Nivedita Jain's case did not say that all the Regulations framed by the Medical Council under Section 33 of the Medical Council Act were directory. He said that the Court in that case was considering Regulations 1 and 2 only and it had held that while Regulation 1 was mandatory, Regulation 2 was of directory character, i.e., it was recommendatory. Mr. Dave is correct in his submission. The Division Bench in the impugned fell into basic error in holding that this Court in Nivedita Jain's case said as if all the Regulations were directory in nature. We may now examine that judgment and a few others cited at Bar.

In State of Madhya Pradesh and another vs. Kumari Nivedita Jain and others (1981 (4) SCC 296) there was challenge to the validity of the executive order passed by the State Government relaxing the conditions relating to the minimum qualifying marks for selection of students to medical colleges of the State in respect of candidate belonging to Scheduled Castes and Scheduled Tribes categories being violative of the Regulations framed under Section 33 of the Indian Medical Council Act, 1956. The Court referred to the object of the Act and to its various provisions relevant being Sections 19 and 19A of the Medical Council Act. Nivedita Jain, who was a candidate for admission to the medical college in the State of Madhya Pradesh, contended that the order of the State Government, lowering the qualifying marks for Scheduled Castes and Scheduled Tribes candidates for admission to medical colleges, contravened Regulation II and would be hit by Section 19 of the Medical Council Act exposing the medical colleges to the risk of being recognised. High Court had struck down the Government's order being violative of Regulation II which had the force of a statute. This Court considered Regulations I and II. While Regulation I provided for admission to medical course stating that no candidate shall be allowed to be admitted to the medical curriculum proper until he had attained certain age and had passed certain examination, Regulation II provided for selection of students and it said that selection of students to a medical college should be based solely on merit of the candidate and it laid certain criteria to be adopted uniformly throughout the country for the determination of merit. This Court observed as under :-

"Regulation I prescribed the eligibility f a candidate for admission to medical courses. For maintaining proper standards in Medical Colleges and Institutions it comes within the competence of the Council to prescribe the necessary qualification of the candidates who may seek admission into the Medical Colleges. As this Regulation is within the competence of the Council, the Council has framed this Regulation in a manner which leaves no doubt that this Regulation is mandatory. The language of this Regulation, which starts with the words "no candidate shall be allowed to be admitted to the medical curriculum until...", make this position absolutely clear. On the other hand the language in Regulation II which relates to s election of candidates clearly goes to indicate that the Council itself appears to have been aware of the limitation on its powers to frame any such regulation regarding the procedure or process of selection of candidates for admission to the medical course out of the

candidates qualified or eligible to seek such admission."

The Court said that it was of the opinion that the use of the words "should be" in Regulation II was deliberate and was intended to indicate the intention of the Medical Council that it was only in the nature of recommendation. Regulation I, which lays down conditions or qualifications for admission into medical course, comes within the competence of Medical Council under Section 33 of the Medical Council Act and it is mandatory and the Medical Council has used language to manifest the mandatory character clearly, whereas Regulation II, which deals with process or procedures for selection from amongst eligible candidates for admission, is merely in the nature of a recommendation and directory in nature, as laying down the process or procedure for selection or admission of candidates out of the candidates eligible or qualified for such admission under Regulation I. The Court said that from the provisions of the Medical Council Act it was apparent that the authority of the Medical Council extends to the sphere of maintaining proper medical standards in medical colleges or institutions necessary for obtaining recognised medical qualifications and by virtue of this authority it may be open to the Medical Council to lay down the minimum educational qualification required for the students seeking admission into medical colleges. Medical Council was authorized to prescribe minimum standards of medical education required for granting recognized medical qualification including standards of post-graduate medical education. The Medical Council Act envisages that if it appears to the Medical Council that the course of study and examination to be undergone in, or the proficiency required from students at any examination held by any university or medical institution do not conform to the standard prescribed by the Medical Council or that the staff, equipment, accommodation, training and other facilities for instructions and training provided in such university or medical institutions or in any college or other institution affiliated to that university do not conform to the standards prescribed by the Medical Council, it will make representation to that effect to the Central Government and on the consideration of the representation made by the Medical Council, the Central Government may take action in terms of the provisions contained in Section 19 of the Medical Council Act. The Medical Council Act also empowers the Medical Council to take various measures to enable it to judge whether proper medical standard is being maintained in particular institutions or not.

In Dr. Ambesh Kumar vs. Principal, L.L.R.M. Medical College, Meerut and others (1986 (Supp.) SCC 543) there were challenge to an order of the State Government laying down qualifications regarding eligibility of a candidate to be considered for admission to the post-graduate degree in M.D., M.S. and diploma course in M.D., M.S. etc. on the basis of merit in accordance with the Regulations made under the Indian Medical Council Act. It was contended that the order of the State was invalid as it encroached upon Entry 66 of List I of the Seventh Schedule to the Constitution. The State Government had issued a notice inviting applications for admission to various post-graduate courses in degree and diploma in different specialities of the medical colleges. In para 4 of the said notice it was specifically stated that the minimum eligibility qualification of the applicants would be according to the recommendations of Medical Council of India. Over and above what the Regulation of the Medical Council has prescribed the State Government laid the following provision :-

"No candidate shall be eligible for admission to post-graduate degree or diploma course, who has obtained less than 55 per cent and 52 per cent marks respectively, for

the two courses (degree & diploma) in merit calculated in accordance with para 2 of the said notice."

This Court considered the question so raised and upheld the Government's order with the following observations:-

"20. The only question to be considered is whether the impugned order is repugnant to or encroaches upon or it is in conflict with the power of the Central legislature to make laws in respect of matters specified in Entry 66 of List I of the Seventh Schedule to the Constitution. The Indian Medical Council pursuant to Section 33 of the Indian Medical Council Act had made certain recommendations which have been embodied in the Regulations made by the Central Government laying down the criteria or standards for admitting the candidates to various post-graduate disciplines in the Medical Colleges of the State. These Regulations, as has been quoted hereinbefore, clearly prescribe that the candidates should be selected strictly on merit judged on the basis of academic record in the undergraduate courses i.e. MBBS Course and this selection should be conducted by the University. There are also other eligibility qualifications provided in the said Regulations namely the candidates must have obtained full registration i.e. they must have completed satisfactorily one year of compulsory rotating internship after passing the final MBBS examination and also they must have done one year's housemanship prior to admission to the post-graduate degree or diploma course."

"22. In the instant case the number of seats for admission to various post-graduate courses both degree and diploma in Medical Colleges is limited and a large number of candidates undoubtedly apply for admission to these courses of study. In such circumstances the impugned order laying down the qualification for a candidate to be eligible for being considered for selection for admission to the said courses on the basis of the merit as specified by Regulations made under the Indian Medical Council Act, cannot be said to be in conflict with the said Regulations or in any way repugnant to the said Regulations. It does not in any way encroach upon the standards prescribed by the said Regulations.

On the other hand by laying down a further qualification of eligibility it promotes and furthers the standards in an institution."

In Osmania University Teachers' Association vs. State of Andhra Pradesh and another (1987 (4) SCC 671) the question for consideration before the Court was if the Andhra Pradesh Commissionerate of Higher Education Act, 1966 was constitutionally valid being violative of Entry 66 List I or Entry 25 List III of the Seventh Schedule to the Constitution. The Court examined the relevant entries in List I and List III and said that the field to which impugned Act applied was already

occupied by the University Grants Commission Act, passed by the Union Parliament. The impugned Act had established a Commissionerate which the Court said had practically taken over the academic programmes and activities of the Universities and Universities had been rendered irrelevant if not non- entities. The Court observed as under :-

"14. Entry 25 List III relating to education including technical education, medical education and universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to 'education' has been distributed between List I and List III of the Seventh Schedule.

15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable.

xxx xxx xxx xxx

25. It is apparent from this discussion that the Commissionerate Act has been drawn by the large in the same terms as those of the UGC Act. The Commissionerate Act, as we have earlier seen also contains some more provisions. Both the enactments, however, deal with the same subject matter. Both deal with the co-ordination and determination of excellence in the standards of teaching and examination in the Universities. Here and there, some of the words and sentences used in the Commissionerate Act may be different from those used in the UGC Act, but nevertheless, they convey the same meaning. It is just like referring to the same person with (sic by) different descriptions and names. The intention of the legislature has to be gathered by reading the statute as a whole. That is a rule which is now firmly established for the purpose of construction of statutes. The High Court appears to have gone on a tangent. The High Court would not have fallen into an error if it had perused the UGC Act as a whole and compared it with the Commissionerate Act or vice versa."

Mr. Reddy, appearing for the State of Karnataka, referred to a decision of this Court in Ajay Kumar Singh and others vs. State of Bihar and others (1994 (4) SCC 401). In this case the Court was

considering the question of permissibility of providing reservations under clause (4) of Article 15 of the Constitution in post-graduate medical courses in the State of Bihar. The State Government had issued a prospectus relating to post-graduate medical admission test, 1992 providing reservation in favour of socially and educationally backward classes, Scheduled Castes, Scheduled Tribes and women. One of the contentions raised was that the Regulations made by the Medical Council prescribed reservation of seats in post-graduate medical courses on any grounds whatsoever and that the Regulation being statutory in nature prevailed over the executive orders made by the State of Bihar in exercise of executive powers. The Court again considered the relevant entries in Lists I and III of Seventh Schedule to the Constitution and the provisions of the Medical Council of India Act and the Regulations framed under Section 33 of that Act. The Court observed as under :-

> "18. A review of the provisions of the Act clearly shows that among other things, the Act is concerned with the determination and coordination of standards of education and training in medical institutions. Sections 16, 17 18 and 19 all speak of "the courses of study and examinations to be undergone" to obtain the recognised medical qualification. They do not speak of admission to such courses. Section 19-A expressly empowers the council to "prescribe the minimum standards of medical education"

required for granting undergraduate medical qualification. So does Section 20 empower the council to prescribe standards of postgraduate medical education but "for the guidance of universities" only. It further says that the council "may also advise universities in the matter of securing uniform standards for postgraduate medical education throughout India". (The distinction between the language of Section 19-A and Section 20 is also a relevant factor, as would be explained later.) Clause (j) of Section 33 particularises the subjects with respect to which Regulations can be made by the council. It speaks of the courses and period of study and the practical training to be undergone by the students, the subjects of examination which they must pass and the standards of proficiency they must attain to obtain the recognised medical qualifications but it does not speak of admission to such courses of study. Indeed, none of the sections aforementioned empower the council to regulate or prescribe qualifications or conditions for admission to such courses of study. No other provision in the Act does. It is thus clear that the Act does not purport to deal with, regulate or provide for admission to graduate or postgraduate medical courses.

Indeed, insofar as postgraduate courses are concerned, the power of the Indian Medical Council to "prescribe the minimum standards of medical education" is only advisory in nature and not of a binding character. In such a situation, it would be rather curious to say that the Regulations made under the Act are binding upon them. The Regulations made under the Act cannot also provide for or regulate admission to postgraduate courses in any event."

The Court then said that the Regulations made by the Medical Council speak generally of students for post- graduate training being selected "strictly on merit judged on the basis of academic record in the undergraduate course". This, the Court said, was more in the nature of advice and not in binding direction and went to observe as under :-

> "The Regulation does not say that no reservations can be provided under Article 15(4). The power conferred upon the State by clause (4) of Article 15 is a constitutional power. The said power obviously could not have been overridden or superseded by a Regulation made by the Indian Medical Council under the Act. The Regulation must be read consistent with Article 15(4) and if so read, it means that the students shall be admitted to postgraduate training strictly on the basis of merit in each of the relevant classes or categories, as the case may be. Any other construction seeking to give an absolute meaning to the said Regulation would render it invalid both on the ground of travelling beyond the Act. It may also fall foul of Article 15(4)."

The Court also referred to an earlier decision in Nivedita Jain's case (1981 (4) SCC 296) where, as noted in that case, this Court said that Regulation II was directory and did not have any mandatory force. Whether a Regulation is directory or mandatory will depend upon the language used in the Regulation and the object of the Act it seeks to achieve.

Mr. Rama Jois, appearing for J.N. Medical College, Belgaum, respondent No. 16, submitted that if the State or the University has fixed intake for admission to medical college as on June 1, 1992 that would continue to hold good unless the medical college asks for increase. He said that even if the Medical Council had passed production of the seats existing on June 1, 1992 it could do so only after notice and after hearing the medical college. He submitted that in the letter of the Central Government to the Secretary, Medical Council, which is dated January 19, 1994, clarification was given as to the word "established" mentioned in Section 10-A of the Medical Council Act, as amended. In this letter the opinion of the Ministry of Law, Justice and Company Affairs (Department of Legal Affairs) was communicated, which was to the following effect :-

> "The provisions of Section 10-A of the IMC (Amendment) Act, 1993 will not apply to those colleges who have obtained all necessary statutory/ administrative approvals from the respective authorities and where admission procedure was commenced prior to 1st June, 1992. This would imply that all those Medical Colleges who have started the admission procedure prior to 1.6.1992, after taking the following permission, will be outside the purview of 'Amendment' Act;-
>
> (i) Permission of the concerned State Government.
>
> (ii) Affiliation of the concerned University.

This would also apply to cases of increase in admission capacity in Medical Colleges and starting of new Post Graduate Medical Courses."

He said there were further answers to queries raised by the Medical Council in this letter, which showed that Section 10-A would not be applicable in case admission procedure was commenced prior to June 1, 1992. In support of his submission that such a clarification will be binding on the Medical Council Mr. Rama Jois referred to a decision of this Court in K.P. Varghese vs. Income Tax Officer, Ernakulam and another (1981 (4) SCC 173). In this case Central Board of Direct Taxes

issued two circulars which were binding on the Tax Department in administering or executing a certain provision in the Act. The Court said that quite apart from the binding of the circulars "they are clearly in the nature of contemporanea expositio furnishing legitimate aid in the construction of sub-section (2). The rule of construction by reference to contemporanea expositio is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous". We do not think that the aforesaid decision of the Supreme Court under the Income-tax Act, 1961 would be applicable to the clarification issued by the Central Government in its letter dated January 19, 1994. Section 119 of the Income-tax Act, 1961 empowers the Central Board of Direct Taxes to issue such orders, instructions and directions to other Income-tax authorities as it may deem fit for the proper administration of that Act. The powers which the Central Board of Direct Tax exercise under Section 119 of the Income-tax Act, 1961 are statutory in nature. A court is, however, not bound by any clarification that may be issued by the Central Government or any other authority interpreting a certain provision of law. We may, however, note that in the case of J.N. Medical College, we are told, that certain proceedings are pending either in the Karnataka High Court or before the Medical Council regarding the number of seats for admission to the College. It is not necessary for us to comment on those proceedings.

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.

Considering the law laid by this Court in aforementioned judgments and provisions of law, we do not think that the dispute raised by the State of Karnataka is any longer re integra.

Proceedings before the learned single Judge started on a complaint received through post wherein it was alleged that Medical Colleges in the State of Karnataka had been permitted by the State Government to admit students far in excess of the admission capacities fixed by the Medical Council and that this was so despite the directions issued by the Medical Council in its letter dated November 21, 1994 to the State Government, copied of which were also sent to the Director of Medical Education and to the Principals and Deans of the Medical colleges inviting their attention to the provisions of Sections 10A,10B, and 10c of the Medical Council Act which amendment came into effect from August 27, 1992. In this letter of the Medical colleges in the State of Karnataka were admitting students in excess of the number of students fixed by the Medical Council because of the orders of the Karnataka Government. The letter gave details of the admission capacity fixed by the Medical Council and their sanction by the State and yet the admission of students in some colleges was over and above the strength that was fixed by the State Government. A direction, therefore, was

issued to take corrective steps and to reduce the excess number of admissions being made in the medical colleges in the State to the number as approved by the Medical Council. By letter dated August 24, 1995, the Central Government informed the State Government that if there was any proposal to increase the admission capacity in medical colleges, it was required to be submitted to the Central Government in the prescribed format. The State Government was, therefore, requested to submit the proposal to increase the admission capacity college-wise to the Central Government. Since there was no response to the request made by the Medical Council to reduce the admission capacity to that fixed by the Medical Council, it requested the Central Government by its letter dated August 20, 1996 for taking penal action under Section 19 of the Medical Council Act for the purpose of derecognising the medical qualifications granted by the universities in the State. Pleas of the State Government and colleges in the State were that the Medical Council had n statutory authority under the Medical Council Act or any other existing law to fix the admission capacity of the medical colleges in the State and that even Sections 10A, 10B and 10c did not vest any such power in the Medical Council and further that even after June 1, 1992 or for that matter August 27, 1992, the power to fix the admission capacity of a medical college could be traced only to the State Government under Section 53(10) of the Karnataka Universities Act, 1976 read with Section 4(1) (b) of the Capitation Fee Act. Learned single Judge did not find any merit in any of these pleas raised by the respondents and allowed the writ petition as aforesaid. As noted above on appeal by the State of karnataka, the Division Bench in its impugned judgment partly allowed the same.

The State Acts, namely, Karnataka Universities Act and Karnataka Capitation Fee Act must give way to the central Act, namely, the Indian Medical Council Act, 1956. Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medial Council as per the Regulations. Chapter IX f the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to course for studies in a college and that number shall not exceed the intake fixed by the University or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its Regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education and over-seeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the College and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These Regulations are in considerable details. Teacher-student ratio prescribed is 1 to 10 exclusive of the professor or head of the department. Regulations further prescribe, apart from other things, that number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting

Physician/Surgeons of medical colleges and attached hospitals.

In the colleges in the State of Karnataka, the Medical Council prescribed the number of admissions that these colleges could take annually on the basis of these regulations. Without permission of the Medical Council, the number of admissions could not be more than that prescribed at the time of granting recognition to the college. However, it appears that in violation of the provisions of the Medical Council Act, the universities and the State Government have been allowing increase in admission intake in the medical colleges in the State in total disregard of the regulations and rather in violation thereof. These medical colleges cannot admit students over and above the intake fixed by the Medical Council. These colleges have acted illegally in admitting more students than prescribed. Universities and the State Government had no authority to allow increase in the number of admissions in the medical colleges in the State. When regulations prescribed that number of teaching beds will have to be in the ratio of 7 beds per student admitted any increase in the number of admissions will have corresponding increase in the teaching beds in the attached hospital. These regulations have been over-looked by the universities and the State Government in allowing admissions over and above that fixed by the Medical Council. Respondents have not produced any document to show that increase in admission capacity to medical colleges over that fixed by the Medical Council has any relation to the existence of relevant infrastructure in their respective colleges and that there is also corresponding increase in number of beds for students in the attached hospitals. Standards have been laid by the Medical Council, an expert body, for the purpose of imparting proper medical education and for maintaining uniform standards of medical education through out the country. Seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council.

A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and hospital attached to it has to be well equipped and teaching faculty and doctors have to be competent enough that when a medical student comes out he is perfect in the science of treatment of human being and is not found wanting in any way. Country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10A, 10B and 10C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated September 29, 1993 (though the notification is dated September 20, 1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities) has to apply to the Central Government for the permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply.

Having thus held that it is the Medical Council which can prescribe the number of student to be admitted in medical courses in a medical college or institution it is the Central Government alone which can direct increase in the number of admissions but only on the recommendation of the Medical Council. In our opinion, the learned single Judge was right in his view that no medical college can admit any student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government and that Sections 10A, 10B and 10C will prevail over Section 53(10) of the State Universities Act and Section 41(b) of the State Capitation Fee Act. To say that the number of students as permitted by the State Government and or University before June 1, 1992 could continue would be allowing an illegality to perpetuate for all time to come. The Division Bench, in our opinion, in the impugned judgment was not correct in holding that admission capacity for the purpose of increase or decrease in each of the medical colleges/institutions has got to be determined as on or before June 1, 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 under Section 19A of the Medical Council Act which the Division Bench said were only recommendatory. Nivedita Jain's case does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or more recommendatory. It is not that only future admission will have to be regulated on the basis of capacity fixed or determined by the Medical Council. Plea of the State Government that power to regulate admission to medical colleges is prerogative of the State has to be rejected.

What we have said about the authority of the Medical Council under the Indian Medical Council Act would equally apply to the Dental Council under the Dentists Act.

Accordingly, appeal by the Medical Council of India (SLP (C) No.14839/97) is allowed and the impugned judgment of the Division Bench is set aside and we restore the judgment of the learned single Judge. Other appeals by the State of Karnataka (SLP (C) No.20035/97) and Rajiv Gandhi Dental College (SLP (C) No.5471/98) are dismissed. Medical Council of India shall be entitled to costs.