

Government Of Andhra Pradesh And Anr vs Medwin Educational Society And Ors on 11 November, 2003

Equivalent citations: 2004 (1) SLT 12, AIR 2004 SUPREME COURT 613, 2004 (1) SCC 86, 2003 AIR SCW 6162, (2003) 8 JT 567 (SC), 2003 (9) SCALE 500, 2003 (4) LRI 910, (2004) 14 ALLINDCAS 159 (SC), 2003 (8) JT 567, (2004) 3 MAD LW 716, (2003) 4 SCT 923, (2003) 12 INDLD 522, (2003) 8 SERVLR 500, (2004) 1 SUPREME 412, (2003) 9 SCALE 500, (2004) 1 ESC 90

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Bench: S.B. Sinha

CASE NO.:

Appeal (civil) 2609-2616 of 2002

PETITIONER:

GOVERNMENT OF ANDHRA PRADESH AND ANR.

RESPONDENT:

MEDWIN EDUCATIONAL SOCIETY AND ORS.

DATE OF JUDGMENT: 11/11/2003

BENCH:

V.N. KHARE CJ & S.B. SINHA

JUDGMENT:

JUDGMENT 2003 Supp(5) SCR 408 The Judgment of the Court was delivered by S.B. SINHA, J.
INTRODUCTION:

The role of the States Government in the matter of identification of locations of proposed medical and dental colleges in the primal question involved in this batch or appeals, which arise out of a common judgment and order dated 8.11.2000 passed by a Full Bench of the Andhra Pradesh High Court in writ Appeal Nos. 13261332 and 1629 of 1999.

FACTUAL BACKGROUND As the said question is required to be answered keeping in view interpretation of the provisions of the Medical Council of India Act, Dental Council of India Act and the Regulations framed thereunder, it is not necessary to take into consideration the factual matrix of the matter in great details. Suffice it to point out that by reason of two Government orders being G.O. Ms. No. 128 dated 30.4.1998 and G.O. Ms. No. 214 dated 23.6.2000, the Government of Andhra

Pradesh approved 13 locations for establishment of medical colleges and 18 for dental colleges. The said orders were issued in terms of recommendations of a committee comprising of Justice S.V. Maruthi, a the then sitting judge of the Andhra Pradesh High Court, Vice-Chancellor of the NIR University of Health Sciences and the Director of Nizams Institute of Medical Sciences. The sitting judge of the Andhra Pradesh High Court as a Chairperson of the committee was nominated by the Government of Andhra Pradesh in consultation with the Chief Justice of the said High Court. A notification was issued in this behalf in terms whereof the said Committee became entitled to call for the applications and make recommendations to the State Government for granting essentiality certificates to the eligible applicants. Pursuant thereto or in furtherance thereof, applications were called for and upon taking into consideration the merits of respective cases, recommendations were made by the said Committee to the State Government for its consideration as per the guidelines issued in the Medical Council of India Act and the Dental Council of India Act.

WRIT PETITIONS:

A large number of writ petitions were filed before the Andhra Pradesh High Court questioning the aforementioned two Government orders. In the writ petitions, inter alia, the question as regard the validity and legality of constitution of the said committee to go into the question of locations of medical or dental colleges was raised. The Government of Andhra Pradesh's jurisdiction to constitute such committee was also questioned having regard to the provisions contained in the Parliamentary Acts. It was contended that keeping in view the scheme of the Parliamentary Act together with the Regulations made thereunder, the Parliament having occupied and taken over the entire legislative field, the same could not be encroached upon by the State only because essentiality certificate is required to be issued by it as per condition no. 3 of qualifying criteria contained in the Regulations. It was urged that while granting an essentiality certificate, the State Government is concerned only with the question of desirability and feasibility of having the proposed medical colleges at the proposed locations but it cannot insist by way of policy decision or otherwise that the colleges should be located at particular places.

Judgment of the High Court:

A learned Single judge of the High Court allowed the writ applications, holding inter alia, that the function of the committee being quasi-judicial in nature, a sitting judge of the High Court ought not to have associated and functioned as head of such committee having regard to the doctrine of separation of powers. It was further observed that participation of the Vice-Chancellor of the NIR University was also not desirable. It was, however, held that having regard to the provisions contained in Article 371D of the Constitution of India, the Presidential Order issued thereunder had an overriding effect over the provisions of the Parliamentary Acts and in that

view of the matter, the State Government had a say in the matter of determining the locations for establishment of medical and dental colleges.

The appeals taken thereagainst were placed before a Full Bench of the Andhra Pradesh High Court which were disposed of by a judgment and order dated 8.11.2000 holding:

"For the foregoing reasons, we are of the considered view and hold (i) that the State is at liberty, while considering the grant of essentiality certificate under paragraph 3 of the 'qualifying criteria' set out in the scheme for establishment of colleges, to consider the feasibility and desirability of establishing the proposed institutions in the proposed locations in terms of the factors set out in Form II of the Establishment of the New Medical Colleges Regulations, 1999. The other cognate factors are outside the domain of the State Government, having not been delegated to it. (ii) The grant or refusal of the essentiality certificate by the State government constitutes but a tentative or provisional determination of the issue. It is the Medical or Dental Council which is empowered and obligated to independently consider the feasibility of recommending the grant of permission to the Centre for the establishment of medical college or dental college, (iii) Denial of grant of essential certificate by the State by itself is not sufficient for the Council to refuse the recommendation for grant of permission to establish a college, (iv) Article 371D does not empower the State to withhold essentiality certificate on a policy consideration with regard to location, (v) The State cannot provide a prior prescription of location by it to restrict the applications to such locations alone. The State is bound to consider the applications proposing locations other than the locations even if prima facie identified by the State for grant of essentiality certificate; we, however, hold that the State is at liberty to consider the grant of essentiality certificate within the parameters set out in view of the observations made in the judgment, (vi) The State is obligated to record reasons for grant or refusal to grant an essentiality certificate. Recording of reasons ensures that the same has been arrived on the basis of the germane, relevant and rational parameters within the jurisdiction and domain of the State Government (vii) The scheme for establishment of colleges can be submitted without the State calling for the applications."

The Full Bench, however, while disagreed with the view of the learned Single Judge to the effect that the vice-Chancellor of the University should not associate himself with the functioning of the committee, left the question as regard justifiability or otherwise of participation of a sitting judge of the court in such committee open, for being decided in an appropriate case. The Full Bench gave the aforementioned directions, inter alia, observing that the Government of Andhra Pradesh had not followed any discernible principle in the matter of identification of various locations. It was opined that as no principle had been evolved, it was possible that a few deserving and qualified institutions might have failed to apply for essentiality certificate. It was further observed that as a large number of new locations had been

successively added by the State Government by various notifications, the consideration of existing applications and the consequent grant or refusal of essentiality certificates could not have been on a rational basis founded on a holistic view of the relevant parameters. The Full Bench remarked:

"...Random consideration of applications in such dynamic and fluid state of specification on locations, cannot but result in imperfect consideration, leading to erroneous conclusions, inter se the various applicants or even per se."

The Full Bench of the High Court relying on or on the basis of the visions of this Court in *Jaya Gokul Education Trust v. Commissioner and Secretary to Government, Higher Education Department*, [2000] 7 SCC 231 and *Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of Tamil Nadu and Ors.*, [1996] 3 SCC 15, further observed that the State cannot withhold the essentiality certificate on any policy consideration as the policy in the matter of establishment of a new medical college now rests with the Central Government alone. It, however, held that the legislative field having been covered by the Central enactment, the State has no power under Article 371D or a prerogative to identify the locations within the State for establishment of new medical and dental colleges.

SUBMISSIONS:

The learned Solicitor General appearing on behalf of the Medical Council of India and Mr. G.L. Sanghi, learned Senior counsel appearing on behalf of the Government of Andhra Pradesh would urge that the High Court committed a manifest error in arriving at a conclusion that the State has absolutely no say in the matter inasmuch as it while granting an essentiality certificate is not only required to apply its mind with regard to its local needs but also have to take the responsibility of transferring students of other medical colleges in the event affiliation granted to the medical college is withdrawn or not extended. Relying on the decision of this Court in *State of Maharashtra v. Indian Medical Association and Ors.*, [2002] 1 SCC 589, the learned counsel would contend that grant of essentiality certificate by the State Government or the Union Territory Administration, as the case may be, being mandatory, the requirement of desirability of having the proposed medical colleges at the proposed locations in terms of para 3 of the Regulations constitutes an important factor and , thus, the same, by necessary implication, is required to be determined by the State Government. The learned counsel would contend that the desirability of establishing medical college at the proposed location and the availability of adequate clinical material as per the Parliamentary Legislation are also required to be decided by the State Government. The Medical Council of India or the Dental Council of India, it was submitted are only concerned with the standard of education. The learned counsel would therefore, contend that the State Government's jurisdiction as regard the location of the proposed medical college is implicit having regard to the requirement

of grant of essentiality certificate.

Drawing our attention to Section 64 of the Act, it was urged that the power of the State Government to grant permission to set up a new medical college is substantially the same for granting essentiality certificate to a management or an institution who intends to establish a new medical college at a proposed location. It was submitted that the said provision is to be read with para 3 of the Regulation.

The learned counsel appearing on behalf of the respondents, however, submit that the State Government has a limited role to play in the matter of identification of locations which is confined to the question as to whether proper infrastructure of starting a medical college as per the Regulations are available or not. The State, it is urged, cannot have any manner of say in such matters on the basis of a policy decision or otherwise as the ultimate decision in relation thereto rests with the Central Government in terms of the provisions of the Act and the Regulations framed thereunder. In any event, such a decision on the part of the State Government being quasi judicial in nature, it cannot act arbitrarily or whimsically nor in relation thereto, political considerations can be allowed to have any role to play. It was urged that in the matter of discharge of limited statutory functions under the Parliamentary Act and the Regulations framed thereunder, the State cannot take shelter under Article 371D of the Constitution of India. Its decisions, it was submitted, must be informed by sufficient and cogent reasons as the same are subject to judicial review by the High Court.

ISSUES:

The issue which arises for consideration is:

(1) What is the proper, assigned and available role of the State Government in the matter of grant of essentiality certificate for establishment of Medical or Dental college, especially in the context of the operative constitutional, legislative and statutory provisions;"

Statutory provisions and the procedure laid down thereunder:

"Education", including 'Technical Education', 'Medical Education' and Universities' is the subject-matter of Entries 63, 64, 65 and 66 of List I of the Seventh Schedule of the Constitution of India.

For the purpose of disposal of these appeals, we would refer only to the relevant provisions of Medical Council of India Act ("the Act") as the provisions of the Dental Council of India Act are in pari materia therewith.

The Medical Council of India Act, 1956 was enacted to provide for the reconstitution of the Medical Council of India, and the maintenance of a Medical Register for India and for matters connected therewith.

This Court in *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.*, [1993] I SCC 645 made certain observations as regard making of appropriate statute having regard to the provisions contained in the relevant entries in List I of the Seventh Schedule of the Constitution. Pursuant to or in furtherance of the said observations, Sections 10A, 10B and 10C were inserted by the Parliament by reason of the Medical Council of India (Amendment) Act, 1993.

Section 10A of "The Act" mandates that save and except with the previous permission of the Central Government obtained in accordance therewith no person shall establish a medical college. For the said purpose the person or medical college concerned shall file a scheme before the Central Government which shall be referred to the Council for its recommendations. Clause (b) of sub-section (2) of Section 10A of "The Act" provides that 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 fees as may be prescribed. The Council upon fulfilment of the requirements of the said Act and the Regulations framed thereunder is to submit its recommendations to the Central Government having regard to the factors enumerated in sub-section (7) of Section 10-A of the Act. Section 10B provides for non-recognition of medical colleges in certain cases. Section 10C provides for time for seeking permission for certain existing medical colleges.

By reason of the said Amendment Act, 1993, the regulation making power contained in Section 33 was also amended by inserting the following clauses:

"(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 10-A;

(fb) any other factors under clause (g) of sub-section (7) of Section 10-A;

(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 10-B." The Central Government pursuant to or in furtherance of the said power made a regulation known as Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993. In terms of the scheme framed thereunder the eligibility criteria and the qualifying criteria were laid down. The Medical Council of India thereafter with the previous sanction of the Central Government in exercise of the power conferred by Section 10A read with Section 33 of "The Act" made new Regulations known as Establishment of Medical College Regulations, 1999.

We may, however, hasten to add that although the Government orders were issued by the appellant-State in terms of 1993 Regulations, for the purpose of disposal of these appeals, it may be necessary for us also to take into consideration the relevant provisions of the 1999 Regulations.

Regulation 3 prohibits any person from establishing a medical college except with the prior permission from the Central Government by submitting a Scheme provided therein. The scheme is an elaborate one. Paragraph 1 of the scheme provides for Eligibility Criteria. Paragraph 2 provides for Qualifying Criteria. Paragraph 3 provides for Form and Procedure. Paragraph 4 provides for Application Fee. Paragraph 5 provides for Registration. Paragraph 6 provides for Evaluation by Medical Council of India. Paragraph 7 provides for Report of the Medical Council of India. Paragraph 8 provides for Grant of Permission.

The 1999 Regulations also prescribed a form of application being Form-1 to be filled giving particulars of the applicant seeking permission of the Central Government to establish a new Medical College. Form 2 has been prescribed for grant of Essentiality Certificates by the State.

The Government of Andhra Pradesh issued G.O.Ms. No. 128 dated 30.4.1998 specifying five locations where medical colleges as also dental colleges can be established. Similarly G.O.Ms. No. 214 dated 23.6.2000 provided for proposal for setting up medical and dental colleges at five different places as mentioned therein. The Committee thereafter issued notification calling for applications. Pursuant to or in furtherance of such notification, the persons desirous of establishing medical colleges filed applications before the Government of Andhra Pradesh for grant of essentiality certificates.

It is not in dispute that one of the qualifying criteria to render an association eligible for permission to set up a new medical and dental college is to the following effect: of having the proposed medical college/dental college at the proposed location has to be obtained by the applicant from the respective State Governments or the Union territory Administration and that the adequate clinical material is available as per Medical Council of India's requirements."

The statutory requirements as laid down in the Act and the Regulations are, therefore, required to be complied with before application filed by the person or association for setting up medical college is taking up for consideration.

It is not in dispute that the Medical Council of India on receipt of such application from the Central Government verifies the contents thereof, inter alia, by conducting physical inspection of the institution for the purpose of making a recommendation to the Central Government for issuance of Letter of Intent to the applicant towards establishing a medical college. A further inspection is carried out for making recommendations for renewal of the permission, in the event the same is granted by the Central Government on an annual basis.

However, in the matter of implementation of the statutory scheme for grant of permission and annual renewal, the Medical Council of India experienced difficulties and it came across cases where the colleges despite grant of initial permission could not provide the infrastructure, teaching and

other facilities as a result whereof the students who had already been admitted suffered serious prejudice. Only with a view to overcome the said situation, the 1999 Regulations provided for grant of essentiality certificate which is in the following format:

"Form-2 Subject: Essentiality Certificate No. Government of _____ The Department of Health, Dated, the ____ To (applicant), Sir, The desired certificate is as follows:

(1) No. of institutions already existing in the State.

(2) No. of seats available or No. of doctors being produced annually (3) No. of doctors registered with the State Medical Council.

(4) No. of doctors in Government Service

(5) No. of Government posts vacant and those in rural/difficult areas.

(6) No. of doctors registered with Employment Exchange.

(7) Doctor population ratio in the State.

(8) How the establishment of the college would resolve the problem of

deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.

(9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State be specified.

(10) Full justification for opening of the proposed college.

(11) Doctor-patient ration proposed to be achieved. The (Name of the person)_____has applied for establishment of a medical college at_____. On careful consideration of the proposal, the Government for_____has decided to issue an essentiality certificate to the applicant for the establishment of a Medical College with_____ (no.) seats. It is certified that:

(a) The applicant owns and manages a 300 bedded hospital which was established in _____.

(b) It is desirable to establish a medical college in the public interest;

(c) Establishment of a medical college at_____ by (the name of Society/Trust) is feasible.

(d) Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the

medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

Yours faithfully, (Signature of the Competent Authority)"

Grant of the said certificate in the prescribed form, therefore, emanates from the scheme framed under the Parliamentary legislation. The said form is a part of the Regulations which are required to be considered in the light of the Parliamentary Acts.

By reason of clause 1 l(d), a responsibility has been cast upon the State Government to give an undertaking that in case the applicant who seeks to establish a medical college, fails to create infrastructure for the medical college as per the norms laid down by the Council and in the event the fresh admissions are stopped by the Central Government, the State Government shall be obligated to take over the responsibility of the students already admitted in the college. Such an undertaking on the part of the State Government is unequivocal and unambiguous. The Central Government and the Medical Council of India in the aforementioned premise opined that the selection of locations for establishment of a medical college is a matter which is required to be dealt with by the respective State Governments and not by the Medical Council of India.

The High Court in paragraph 13 of the impugned judgment noticed the aforementioned submission of the Medical Council of India as regard delegation of power to the State Government under Regulations 1993 read with the scheme framed thereunder, having regard to the limited manpower and resources available to the Medical Council and the Dental Council on the one hand vis-a-vis the plentitude of resources including the expertise in the matter of local conditions in the State on the other. The High Court did not advert to this aspect of the matter.

In view of the aforementioned statutory provisions, there cannot be any doubt or dispute that an essentiality certificate to set up a medical college at the proposed site and adequate clinical material by a person is required to be obtained in Form-2 appended to the said Regulations, which lays down the following conditions:

"(1) to (7) xxx xxx xxx (8) How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.

(9) xxx xxx xxx (10) Full justification for opening of the proposed college."

By conferring such a power on the State Government, it is idle to contend that the Central Government has abdicated its powers in favour of the State in terms of Entry 66, List I of the

Seventh Schedule of the Constitution of India. The Parliament is empowered to enact an Act for the purpose of ensuring coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. By reason of such a provision the Central Government cannot be said to abdicate its power in favour of the State. Thereby only a part of its function is required to be carried out by the State.

It is not necessary for us to delve deep into the matter as regard the scope and extent of the legislative fields, as the said question has been dealt with by this Court earlier.

In *Thirumuruga (supra)*, a two-judge Bench was considering the provisions of the 1993 Regulations. In the tact situation obtaining therein, it was observed:

"...For the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical college now rests with the Central Government alone."

The contentions which have been raised before this Court were not raised therein and furthermore, the requirements contained in terms of the 1999 Regulations did not fall for consideration therein.

It is interesting to note that keeping in view the practical difficulties faced by the Central Government or the statutory bodies like the Medical Council of India or the University Grants Commission, some power is sought to be delegated to the State so as to make the Parliamentary statute completely workable. Such 'play in the joint' is also desirable having regard to the federal structure of our Constitution.

In *State of Andhra Pradesh v. K. Purushotham Reddy and Ors.*, [2003] 3 SC 15, this Court had an occasion to consider the provisions of the University Grants Commission Act, 1956 vis-a-vis the Andhra Pradesh State Council of Higher Education Act, 1988. The validity of the State Act was upheld by this Court noticing that the powers and functions of the Council stood curtailed insofar as they are not only to function in accordance with the guidelines issued by the University Grants Commission but its duty is to assist the Commission in respect of determination and maintenance of standards and suggest remedial action of higher education in the State. Keeping in view the provisions of the Parliamentary Act and the said Act it was observed:

"Once it is held that the duties and functions of the Councils are compartmentalised and they have to act in accordance with the guidelines issued by the UGC from time to time, it is preposterous to suggest that the Council acts on its own and/or at the instance of the Government in the field of cooperation and determination of standards in institutions of higher education as an independent body. Keeping in view the fact that the Commission itself on the request of the Central Government

constituted a committee and laid down the parameters within which the Council can function and subjected themselves to the restriction of working within the guidelines issued by the UGC, we fail to understand as to how it can be contended that both the Commissionerate Act as also the Council Act provide for same powers and functions. The modifications made in the 1988 Act vis- a-vis the Commissionerate Act cannot be said to be so slight as has been opined by the High Court so as to arrive at a conclusion that the 1988 Act still suffers from the same vices. Having regard to the provisions of the 1988 Act and particularly Section 11 thereof we have no doubt in our mind that the purpose of the said Act, and the powers and function thereof vis- a-vis the Commissionerate Act are absolutely distinct and different. In no way the 1988 Act can be said to have an upper hand over the UGC Act.

It is not a case where the State Council of Higher Education were to act independently irrespective of the standard of education set forth by the University Grants Commission. Its powers and functions, as indicated hereinbefore, are absolutely different from that of 1986 Act."

It was further observed:

"...Once the powers and functions of the Council is found to be subject to the guidelines issued by the UGC and the perspective plan prepared by it would be subject to its approval, the question of standard of education set up by the State Act cannot be said to be leading to wipe out or appreciably abridge the central field.

The 1988 Act expressly states that the same would be subject to the Central Act. It emphasizes that the provisions thereof are for the purpose of filling up of the gaps and to control effectively a large number of universities within which, having regard to their sheer number, the UGC itself would not be in a position to have effectively control over them. If the UGC has an overall control over the State Council, the Central field is not entrenched upon. In a situation of this nature the doctrine of pith and substance must also be held to be applicable. We must also take notice of the fact that the State of Tamil Nadu as also the State of West Bengal in terms of the National Education Policy, 1986 as also the recommendations of the Committee framed by the University Grants Commission enacted similar Acts."

However, in Dr. Preeti Srivastava and Anr. v. State of M.P. and Ors., [1999] 7 SCC 120, it is held:

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

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

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

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

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

Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institution as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254."

The aforementioned decisions have been referred to with a view to show that there are certain situations where the State may even make legislation subject to the Parliamentary legislation.

The instant case stand on a better footing inasmuch as the State Government has been assigned only certain statutory functions by the Regulations framed under the Parliamentary Act itself and in that view of the matter no exception thereto can be taken.

This aspect of the matter has been considered in the State of Maharashtra v. Indian Medical Association and Ors., [2002] I SCC 589 where in a two- judge Bench of this Court of which one of us Khare, CJI (as he then was) was a member observed: "A perusal of para 3 of the Regulation shows that it is mandatory on the part of an institution or a management desirous of establishing a medical college to obtain Essentiality Certificate from the respective State Government or the Union Territory Administration, as the case may be. The requirement of Essentiality Certificate provided under para 3 of the Regulation concerns with among other requirements the desirability of having the proposed medical college at the proposed location. The desirability of having the medical college at the proposed location under para 3 of the Regulation is required to be decided by the State Government. Excepting the desirability of location of the proposed medical college and certificate

that adequate clinical material is available as per the Medical Council of India at the proposed medical college, which are to be decided by the State Government all other aspects regarding establishment of a new medical college and imparting of the education therein are covered by the Central Act and Regulation framed thereunder. In other words, in the matter of establishment of a medical college and medical education, the field that is open where a State Government has any role to play is only in regard to decide the desirability of the location of the proposed medical college and grant of certificate that adequate clinical material is available as per the Medical Council at the proposed medical college. Thus, the State Government is the only authority under the Regulation with which we are concerned to decide the location of a new proposed medical college within the State. The State Government, therefore, is the only judge to decide where the proposed medical college is to be located. For that purpose, the State Government can neither delegate its function to any other authority nor can it create a statutory authority under a State Act. If it does so, it would be repugnant to the Central Act. However, it is true that the State Government in order to maintain inter-or intra regional imbalances within the State and to remove the chances of arbitrariness, can lay down guidelines or prepare a perspective plan for its own guidance for selecting locations for a proposed new medical college within the State."

Yet again referring to the provisions of Section 64 of the Act, this Court held that there is another object behind the necessity of obtaining the essentiality certificate from the State Government under para 3 of the Regulations stating:

"A perusal of Section 64 shows that it provides for procedure for obtaining permission by the State Government for setting up a new medical college and confers exclusive power on the State Government for grant of permission to a management to establish a new medical college. The power of the State Government to grant permission to set up a new medical college under Section 64 of the Act is substantially the power of the State Government to grant Essentiality Certificate to a management or an institution who intends to establish a new medical college at a proposed location. If Section 64 of the Act is read along with para 3 of the Regulation it would show that the requirement of Essentiality Certificate or approval by the State Government is required when a private management or any other person other than the State Government intends to set up a medical college..."

The role of the State in the matter of establishment of professional colleges by the minority community as also private agencies came up for consideration before a eleven-Judge Bench of this Court in T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors., [2002] 8 SCC 481. The court no uncertain term held that the right to establish and administer educational institutions although is available to all citizens under Articles 19(1)(g) and 26 and to the minority under Article 30 of the Constitution but the same are subject to reasonable restrictions.

In T.M.A Pai (supra) a distinction was made between minority and non- minority professional medical colleges as regard percentage for admission of students can be reserved by the management but it was held that the rest have to be filled up on the basis of counselling by the State agencies. Interpretation of the aforementioned finding in T.M.A. Pai (supra) in para 68 of the judgment

vis-a-vis other authorities came up for consideration before a Constitution Bench of this Court in *Islamic Academy of Education and Anr. v. State of Karnataka and Ors.*, [2003] 6 SCC 697. Before the Constitution Bench, inter alia, the following questions were raised:

"(3) whether private unaided professional colleges are entitled to fill in their seats, to the extent of 100%, and if not, to what extent; and (4) whether private unaided professional colleges are entitled to admit students by evolving their own method of admission."

Dealing with the said question, the Chief Justice of India speaking for himself, Variava, Balakrishnan and Pasayat, JJ, observed:

"...It is provided that in cases of non-minority professional colleges "a certain percentage of seats" can be reserved for admission by the management. The rest have to be filled up on the basis of counselling by State agencies. The prescription of percentage has to be done by the Government according to local needs. Keeping this in mind provisions have to be made for the poorer and backward sections of the society. It must be remembered that, so far as medical colleges are concerned, an essentiality certificate has to be obtained before the college can be set up. It cannot be denied that whilst issuing the essentiality certificate the respective State Governments take into consideration the local needs. These aspects have been highlighted in a recent decision of this Court in *State of Maharashtra v. Indian Medical Association*. Whilst granting the essentiality certificate the State Government undertakes to take over the obligations of the private educational institution in the event of that institution becoming incapable of setting of the institution or imparting education there in...."

One of us, (Sinha, J.) however, keeping in view that therein not only cases of medical colleges but also professional colleges were in question, observed that grant of the essentiality certificate may not be the sole criteria. It was further noticed that in the case of *State of Maharashtra (supra)*, the expression 'technical education' occurring in Article 371(l)

(c) of the Constitution of India as regard distinction between medical education and technical education did not come up for consideration therein. It was, however, held:

"Local needs:

It is difficult to define precisely what would constitute "local needs".

Mr. Venugopal refers to the Medical Council of India Regulations, 1999 for the purpose of showing the requirements necessary to be considered by the State Government for the grant of essentiality certificate. The State Government alone would be in a position to determine local needs which may be based, for instance, in the case of doctors, on the ratio of doctors to the population of the State. Other factors such as the percentage of the relevant minority in the State, the number of minority

professional colleges belonging to that particular linguistic/religious minority in the State, percentage of poorer and backward sections in the State, total number of professional colleges therein, contends Mr. Venugopal, would be relevant factors. This may be so but similarly there are many more factors that would contribute to local needs. The criteria laid down in MCI Regulations no doubt provide for some guidelines for the purpose of determination of local needs but the same cannot be said to be exhaustive. Local needs would vary from State to State. Even development of a backward area may be a local need. Absence of good educational institutions in particular area may also be a local need. The State may, in pursuit of its policy for the development of the people, consider it expedient to encourage entrepreneurs for establishing educational institutions in remote and backward areas for the benefit of the local people. Local needs, therefore, cannot be defined only with reference to the State as a unit. For good reasons the State may not like to establish professional colleges or institutions only in their capitals.

ESSENTIALITY CERTIFICATE:

Although local needs, thus, may have to be determined keeping in view the factors enumerated therein but it must also be noticed that no essentiality certificate is required to be given by the State in relation to engineering and other professional colleges. While laying down the law based on interpretation of a Constitution as well as a judgment, we cannot take a myopic view and hold that 'local needs' must be referable to the medical education. Furthermore, it may be difficult to give a restrictive meaning to the expression 'local needs' i.e. keeping the same confined to the area where the educational institution is ought to be established inasmuch as the right of minority extends to the entire State and, thus, the local needs may also have direct nexus having regard to the need of the State."

The upshot of the aforementioned discussions is that, in our opinion, the High Court has committed a manifest error in holding that the State has no role to play in the matter of identification of location of the sites where the medical colleges are proposed to be established. While granting an essentiality certificate particularly having regard to the local needs, the State, in our considered view, has a positive role to play but the same would not mean that the State Government's say is final as ultimately final recommendations have to be made by the Medical Council of India and the Dental Council of India, as the case may be, whereafter the final decision has to be taken by the Central Government.

We may, however, hasten to add that for the purpose of identifying the sites Article 371D of the Constitution of India may not have any application. Mr. Sanghi, learned Senior Counsel, appearing on behalf of the State of Andhra Pradesh conceded to the aforementioned legal position.

CIVIL APPEAL NOS. 2608 OF 2002 We may now proceed to determine the issues raised in Civil Appeal Nos. 2608 of 2002.

The appellant intended to set up a medical college at Jedcherla within the Telengana region of the State of Andhra Pradesh. It filed a writ petition questioning an order of the State Government dated 21.10.1997 whereby and whereunder the application filed by the appellant herein for grant of essentiality certificates was rejected, stating:

"The Government have examined the above matter in detail. Since the High Court of AP have ruled that the admission in private Medical College shall be restricted to local area only in accordance with the Presidential Order with effect from the next academic year and since there is already one minority institution for the nine Districts of Telengana region (erstwhile Camania University area) and another minority institution in the same area will cause regional imbalance as there is no minority institution elsewhere in the State, the Government hereby reject your request for grant of Essentiality Certificate for M.B. Christian Medical College at Jedcherla".

The contention raised on behalf of the State was that having regard to the provisions contained in Article 371D of the Constitution of India, it is not bound by the recommendations made by the Committee. Taking umbrage under Article 371D, it was contended that if the appellant is given essentiality certificate, the regional balance of that area would be disturbed and on that basis the said application was rejected.

The learned counsel appearing on behalf of the appellant has pointed out that despite the aforementioned stand taken by the State before the High Court as also before us essentiality certificate has been granted to other minority institutions in Nellore which is within the Telengana region.

The learned Single Judge although disposed of the said application, the contention raised by the appellant was not specifically considered. The Full Bench of the High Court also did not direct the State Government to issue an essentiality certificate as was prayed for, evidently in view of its finding that legislative field is covered by the Parliamentary Act and the final authority to decide the same vests in the Medical Council of India and the Central Government.

CIVIL APPEAL No. 2617 OF 2002:

In Civil Appeal No. 2617 of 2002, the appellant proposed to set up a medical college at Warangal. The committee constituted by the State made recommendations in favour of the appellant whereafter essentiality certificate vide GOHs dated 4.12.1998 was issued. The first respondent, however, filed a writ petition before the Andhra Pradesh High Court questioning the issuance of the aforementioned GOMs.

The learned Single Judge having regard to its finding that the constitution of Justice S.V. Maruthi Committee was illegal, allowed the writ petition of the first respondent, despite holding that the State Government has power to identify the locations of medical colleges. The appellant herein preferred an appeal thereagainst. However,

the said appeal was dismissed by the Full Bench by directing the State Government to issue fresh notification.

The High Court, therefore, did not go into the contentions raised by the parties on merits of the matter.

Having regard to our findings aforementioned, to the effect that the State has a jurisdiction to grant an essentiality certificate, the questions as to whether such essentiality certificate has been justifiably refused in the case of the Governing Conference of Mennonite Brathern Church of India and whether the High Court was right in allowing the writ petition filed by the respondent of Civil Appeal No. 2617 of 2002 are, in our opinion, required to be considered afresh.

Although the State has a say in the matter as regard location for establishing of a media college or dental college, it has to exercise such power in a reasonable manner. The factors which are relevant for determination of such issues would be local needs and public interest. The question as to whether the medical college is being set up by a minority institution or a non-minority institution must be considered in the light of the observations made in T.M.A. Pai (supra) and Islamic Academy of Education (supra). While rejecting such an application for grant of essentiality certificate, the State must comply with the principles of natural justice which would include assigning of sufficient and cogent reasons.

In short, the State cannot act arbitrarily or capriciously. Its decisions must be informed by reasons and based on relevant factors.

We are, therefore, of the opinion that the matters involved in the aforementioned two appeals are required to be considered afresh by a Division Bench of the Andhra Pradesh High Court in accordance with law and in the light of the observations made hereinbefore.

We may observe that we have not considered the merit of the matter keeping view of the fact that the appellant herein had filed application for grant of essentiality certificate long time back. We would request the High Court to consider the desirability of disposal of these appeals expeditiously.

These appeals are disposed of on the above terms. No costs.