REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2023
(@ SLP(C) Nos. 32592-32593 of 2015)

BAHARUL ISLAM & ORS. **APPELLANT(S)**

VERSUS

THE INDIAN MEDICAL ASSOCIATION AND ORS. **RESPONDENT(S)**

WITH

TC (C) NO. 25 OF 2018

TC (C) NO. 24 OF 2018

J U D G M E N T

NAGARATHNA, J.

I N D E X

Leave granted.

2. In these appeals, the appellants have assailed the legality and correctness of the order dated 30.10.2014 passed by the Division Bench of the Gauhati High Court in W.P.(C) No. 5789/2005, whereby the High Court by allowing the Writ Petition struck down the Assam Rural Health Regulatory Authority Act, 2004 (hereinafter referred to as 'Assam Act' or the 'State Act' for the sake of brevity) which was enacted by the Assam State Legislature.

Brief facts of the case:

3. The facts giving rise to the present appeals and transferred cases, in a nutshell are that on 18.09.2004, the Assam Legislature enacted the Assam Act. The said Act was enacted to provide for the establishment of a regulatory authority in the State of Assam to register the Diploma holders in Medicine and Rural Health Care ("DMRHC"), to regulate their practice in medicine in rural areas and to regulate the opening of medical institutions to impart education and training for the course of Diploma in Medicine and Rural Health Care.

3.1. On 23.06.2005, the Director, Medical Education, State of Assam, published an advertisement in the *Assam Tribune* inviting applications from eligible candidates seeking admissions in the three-year course of Diploma in Medicine and Rural Health Care in

the Medical Institute, Jorhat, for the session starting in the year 2005.

3.2. The Indian Medical Association, Assam State Branch, Respondent No. 1 herein, filed a Writ Petition being W.P. (C) No. 5789 of 2005 under Article 226 of the Constitution of India, before the Gauhati High Court, assailing the validity of the Assam Act and the aforesaid advertisement. During the pendency of the Writ Petition before the High Court, the appellants herein were admitted in the First year of the three-year Diploma Course in Medicine and Rural Health Care in the Medical Institute, Jorhat, ('Jorhat Medical Institute' for the sake of convenience) for the sessions 2012-2013, 2013-2014 and 2014-2015 respectively, pursuant to the selection process.

3.3. Having regard to the fact that the Jorhat Medical Institute was created as envisaged under the State Act, and about four-hundred students had been admitted to the diploma course and awarded certificates on having passed the Course, State of Assam made a plea for impleadment of the Regulatory Authority, the Jorhat Medical Institute and the persons who had obtained diploma certificates and had been engaged as Rural Health Practitioners on the basis of such qualification.

3.4. By the impugned order dated 19.09.2014, the High Court rejected the State's plea for impleadment of the Regulatory Authority, the Jorhat Medical Institute and the persons who had obtained diploma certificates from the said Institute during the pendency of the Writ Petition before the High Court.

3.5. The pertinent findings of the High Court, in the impugned order dated 19.09.2014 may be summarized as under:

i) That the State had voluntarily assumed the risk of proceeding with the admission process under the State Act, even after a challenge was made to the *vires* of said Act before the High Court.

ii) The fact that there was no stay on the operation of the State Act would not be a valid justification for the State to proceed with the admissions to the course, more so, when the legality of the said Act was challenged. That the admissions, issue of diploma certificates to the persons who completed the course, and appointment of such persons as Rural Health Practitioners, were all developments that took place subsequent to the writ petition being filed.

iii) That no question arose in the writ petition as to the consideration of individual interests of the parties sought to be impleaded. The question and issue that would arise was only

as to the *vires* of the State Act. Hence, there would be no reason to implead the Regulatory Authority, the Jorhat Medical Institute and the persons who had obtained diploma certificates and had been engaged as Rural Health Practitioners on the basis of such qualification, as necessary parties in the writ petition.

3.6. Further, *vide* the impugned judgment dated 30.10.2014, the High Court allowed W.P. (C) No. 5789 of 2005 by holding that the Assam Act, is unconstitutional and accordingly, the said Act was struck down. The relevant findings of the High Court in the impugned judgment dated 30.10.2014, have been culled out as follows:

i) That the State Act is in conflict with the Central Act i.e. Indian Medical Council Act, 1956 (hereinafter referred to as 'IMC Act, 1956' or 'Central Act' for the sake of convenience) inasmuch as Section 10A of the Central Act categorically declares that no medical college shall "open a new or higher 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.

ii) That the restrictions under Section 10A(b)(i) of the Central Act envisage injunction against medical colleges to open "a new or higher course." The words "new or higher course" would

definitely take in its sweep the diploma course contemplated under the State Act.

iii) That even for commencement of a diploma course, previous permission of the Central Government is required. But in the present case, no permission was taken. Therefore, it was concluded that the State had ventured to introduce a new diploma course in medicine and rural healthcare, without the necessary permission as contemplated under Section 10A of the Central Act.

iv) That the power and scope of the State Legislature to legislate under the field covered under Entry 25 of List III of the Seventh Schedule of the Constitution of India is very limited and is only in respect of a field unoccupied by a Central Act. In the present case, the Central Act fully covers the field and places a total restriction on opening a new course in medicine without the permission of the Central Government.

v) That it would be bizarre to say that the diploma-holders should practice in rural areas and not in urban areas, and they are entitled to treat only certain diseases and prescribe only certain medicines. That such restrictions were unworkable in practice. Such conditions and restrictions were stipulated in Section 24 of the State Act. However, striking down that provision alone would not save the situation as Section 24 is

the "soul" of the State Act and without the said provision, the rest of the provisions of the Act would be meaningless.

vi) Keeping in view the larger interest of health and welfare of society and the lapses committed by the State Legislature in enacting a legislation without obtaining necessary approvals from the Central Government, the State Act was liable to be declared as unconstitutional and accordingly struck down.

3.7. Aggrieved by the impugned judgment, certain persons who were admitted in the First year of the three-year Diploma Course in Medicine and Rural Health Care in the Jorhat Medical Institute, for the sessions 2012-13, 2013-14 and 2014-15, during the pendency of the writ petition before the High Court, have preferred the present appeals.

3.8. At this stage itself, it may be mentioned that consequent upon the striking down of the Assam Act, the Assam Legislature passed the Assam Community Professional (Registration and Competency) Act, 2015 ("2015 Act", for short) with a view to remove the basis of the judgment passed by the Division Bench of the Gauhati High Court in the aforesaid writ petition and in an attempt to restore the position of the diploma holders in medicine and to give them continuity in service. The said Act has been assailed by the diploma holders in Transferred Case (C) Nos. 24 and 25 of 2018 before this

Court. In the circumstances, we have heard these cases together and the same are being disposed of by this common judgment.

Bird's Eye View of the Controversy:

4. The controversy in these cases revolve around the legislative competence of the Assam State Legislature to enact the Assam Act which has been assailed by the writ petitioners before the Gauhati High Court on the ground of legislative competence as per Article 246 read with the relevant entries of List I and III of the Seventh Schedule of the Constitution of India. However, the Gauhati High Court has struck down the Assam Act on the ground of repugnancy as per Article 254 of the Constitution.

Submissions:

5. We have heard learned Senior Counsel Mr. Harin P. Raval and learned senior counsel Mr. Sanjay Hegde for the appellants-diploma holders in medicine and learned counsel Sri Shivam Singh, appearing for the writ petitioner/Respondent No.1 herein namely, Indian Medical Association instructed by Sri Abhinav Singh and learned Additional Solicitor General Sri K.M. Natraj, for the Union of India and learned Senior Counsel Sri Vikas Singh, appearing on behalf of Respondent No. 7, Medical Council of India. We have heard Sri Rana Mukherjee learned Senior Counsel instructed by Ms. Oindrila Sen appearing on behalf of the petitioners in

Transferred Case (C) Nos. 24 and 25 of 2018 and Mr. Ananga Bhattacharyya learned counsel appearing on behalf of the State of Assam. We have perused the material on record.

5.1. Learned Senior Counsel Sri. Harin P. Raval, appearing for the appellants submitted as under:

i. That the impugned judgment proceeds on a misplaced interpretation of the Indian Medical Council Act, particularly Section 10 thereof and is in the teeth of a three-judge bench judgment of this Court in ***Dr. Mukhtiar Chand vs. State of Punjab, (1998) 7 SCC 579, ("Dr. Mukhtiar Chand").*** That the High Court erred in holding that as per Section 10A of the Central Act, any new course including the relevant diploma course can only be opened after prior permission of the Central Government. The appellants submitted that Section 10A of the Central Act only prescribes that a new course which would qualify a person for the award of a recognised medical qualification requires the permission of the Central Government. That Diploma in Medicine and Rural Healthcare is not a medical qualification as defined in Section 2(h) of the Central Act. Therefore, no permission of the Central Government was required to start such a diploma course.

ii. That the award of a recognised medical qualification gives a person the right to be included in the Indian Medical Register under Section 21(1) of the IMC Act. However, as per Section 15 of the said Act for practicing medicine in any State, all that is required is that a person has to be enrolled in a State Medical Register as defined in Section 2(k) thereof as a Register maintained under law enforced in any State regulating the registration of practitioners of medicine. That the impugned Assam Act, is such a law and the State Register of Rural Health Practitioners created by virtue of Section 17 of the Act is such a State Medical Register in terms of even Section 2(k) of the IMC Act, 1956.

iii. That the view taken by the High Court that medical practitioners cannot practice allopathic medicine unless they have completed any of the recognised courses under the IMC Act, was a view which was taken by this court in ***Dr. A. K. Sabhapathy vs. State of Kerala, 1992 Supp. 3 SCC 147, ("Dr. A. K. Sabhapathy").*** Learned senior counsel for the appellants submitted that the said judgment has specifically been overruled by a three-judge bench in ***Dr. Mukhtiar Chand.*** It was thus, submitted that the view taken by the High Court is contrary to the decision in ***Dr. Mukhtiar Chand.***

iv. Learned senior counsel for the appellants refuted the reliance placed by the Respondent-Medical Council of India on ***Gujarat University vs. Krishna Ranganath Mudholkar, 1963 Supp. (1) SCR 112***, ***("Gujarat University")*** wherein it was held that a State Legislation can be unconstitutional even if there is no contrary Union Legislation. It may be declared *ultra vires* if it effectively impinges on the field reserved for the Union under Entry 66 and infringes upon the Union field. It was contended that it is only where the State Legislation makes it impossible or difficult for the Parliament to legislate under Entry 66 of List I, that the State Law can be declared to be bad.

v. The learned senior counsel for the appellants placed reliance on the judgment of a Constitutional Bench of this court in ***R. Chitralekha vs. State of Mysore, AIR 1964 SC 1823, ("R. Chitralekha")*** wherein it was held that it is only when the State Legislation makes it impossible or difficult for the Parliament to legislate under Entry 66 of List I, and only if the impact of the State Law is so heavy or devastating on Entry 66 of List I, so as to wipe out or appreciably abridge the Central field of legislation, can it be struck down but not otherwise. Learned senior counsel contended that in the present case, there is no question of the Assam Act, making it impossible or difficult for the Parliament to exercise its power for co-

ordination and determination of standards in medical institutions. If the Parliament wanted, they could easily legislate to say that no person who does not hold qualifications recognised by the IMC Act can practice allopathic medicine. That Parliament has not said so and Section 15 of the IMC Act indicates that the Parliament recognises that persons enrolled in State Medical Registers under State Acts can practice medicine in the State.

vi. Learned senior counsel for the appellants contended that accepting the argument of the MCI that allopathic medicine can be practiced only by M.B.B.S. doctors with a MBBS degree would not only be totally contrary to the scheme of the IMC Act but would effectively declare unconstitutional a number of State Acts of various States, which have prescribed qualifications other than M.B.B.S. to practice medicine in the State.

vii. That the Medical Council of India (MCI) in the Meeting of its Board of Governors at New Delhi on 16.07.2012, along with the Secretary (Health), Ministry of Health & Family Welfare, Government of India in its proposal for a B.Sc. (Community Health) Program sought to draw experience from the Assam and Chhattisgarh models of the Diploma Course and sought to affiliate these courses/programs to a University or Regulatory

Body. Therefore, the Medical Council of India has itself acknowledged the Assam experience and sought to create a course on the same lines in the interest of public healthcare.

viii. That it is a well-known fact that M.B.B.S. doctors prefer not to practice in rural areas and thus, there is an acute shortage of such doctors in rural areas all over the country. To address such an issue, the Assam Act was brought into force by the State Legislature of Assam. Thus, striking it down would be counter-productive and contrary to the interests of the rural population of Assam.

ix. That as per the impugned Assam Act, Rural Health Practitioners can only practice in rural areas and that too, in a limited manner to treat basic common diseases and to prescribe basic medicines.

Learned Senior counsel submitted that the impugned judgment may be set aside and the Assam Act may be declared to be a valid piece of legislation.

5.2 Sri. Sanjay Hedge, learned Senior Counsel, drew our attention to two judgments of this Court in the case of ***Dr. Mukhtiar Chand*** and ***Subhasis Bakshi*** to contend that this Court has recognised the practice in Allopathic medicine under various enactments and that the said judgments would squarely apply to the facts of this

case. The judgments relied upon by Sri Sanjay Hedge shall be discussed later.

Arguments on behalf of Respondent No. 1 Indian Medical Association:

6. Learned counsel Sri Shivam Singh appearing for Respondent No. 1, Indian Medical Association submitted as under:

i. That the Assam Act is repugnant to the provisions of the Indian Medical Council Act, 1956, (IMC Act, 1956) i.e. the Central Act.

ii. That the role of the Central Government in granting permission for commencement of a "new or higher course" as prescribed under Section 10A(b)(i) of the Central Act, cannot be diluted nor given a go-by. Section 10(A)(1)(b) of the Central Act requires that previous permission of the Central Government be obtained prior to offering a new or higher course of study for obtaining a "recognised medical qualification" at an already established medical college. However, as regards prospective medical colleges, obtainment of previous permission of the Central Government is mandatory regardless of whether the medical college intends to offer a recognised medical qualification or a non-recognised medical qualification.

iii. That the term “Medical College” is not defined in the IMC Act, 1956, thus, reliance must be placed on the definition of “Medical Institution” as defined in Section 2(e) of the IMC Act, 1956. Thus, the term Medical College must be understood in a wide sense to even include those that do not offer a ‘recognised medical qualification’. It was submitted that, the term “medical college” used in Section 10A(1)(a) of the IMC Act ought not be restricted as only “medical college offering a recognised medical qualification” within the meaning of the IMC Act, 1956.

iv. On the strength of the State Act, the Jorhat Medical Institute, was established to provide a Diploma Course in Medicine and Rural Healthcare, without prior permission of the Central Government which is an incurable defect. Thus, the setting up of the Jorhat Medical Institute and commencement of the diploma course is contrary to IMC Act, 1956 and, therefore, unlawful on the ground that it was contrary to Section 10A(1)(a) of the Central Act of 1956.

v. Reliance was placed on the decisions of this Court in ***Chintpurni Medical College & Hospital vs. State of Punjab, (2018) 15 SCC 1, (“Chintpurni Medical College & Hospital”)*** and ***Prof. Yashpal vs. State of Chhattisgarh, (2005) 5 SCC 420, (“Prof. Yashpal”)*** to contend that the State Government does not have the power to enact the Assam Act

and that the States are denuded of the legislative power to legislate on medical education.

vi. That the Central Act, namely, IMC Act, 1956, in pith and substance, falls under Entry 66 of List I and occupies the entire field insofar as establishment of new medical colleges is concerned which deals with coordination and determination of standards, *inter alia*, in medical education. Therefore, the State Legislature is denuded of its power under Entry 25 of List III to enact a law providing for the establishment of a medical college contrary to the provisions of the Central Act.

vii. That the provisions of the Central Act hold the field of medical education and no medical college or course, including the impugned course can be commenced without the permission of the Central Government as mandated under Section 10A of the said Act. Also, the Doctrine of 'Occupied Field' would apply in the present case. Learned counsel for Respondent No. 1 placed reliance on ***Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu, (1996) 3 SCC 15, ("Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust")*** wherein it was held that under section 10A of the Indian Medical Council Act, the Parliament has evinced an

intention to cover the whole field relating to the establishment of new medical colleges in the Country and by virtue of Section 10A, the Parliament has made a complete and exhaustive provision covering the entire field governing establishment of new medical colleges in the Country. No further scope is left for the operation of any State Legislation in the said field which is fully covered by the law made by the Parliament.

viii. That the Assam Act is repugnant to the provisions of the Central Act as no Presidential Assent was obtained as required under Article 254 of the Constitution, to overcome such repugnancy.

ix. Learned counsel for Respondent No. 1 further contended that the students who graduate on completion of the diploma course would be ill-equipped as doctors and this would pose risk to patients who require quality medical assistance and treatment. That it is the fundamental right of the patient to receive quality medical assistance; meeting the standards as prescribed by the Indian Medical Council or by the Parliament but such quality treatment cannot be provided by those who do not have the requisite qualification as per the standards set by the Parliament.

x. That one of the restrictions under Section 24 of the Assam Act, being that the practitioners who graduate in the diploma

course would only be allowed to work in rural areas of the State of Assam, was not only unworkable but also in violation of Article 14 and 21 of the Constitution as equal quality of treatment should be secured for every citizen of this State. That the Assam Act discriminates between patients living in rural areas and those living in urban areas, implying that the persons who live in urban areas are entitled to standard treatment and those who live in rural areas are entitled to sub-standard treatment.

xi. That the argument of the appellants that doctors with MBBS qualification do not wish to practice in rural areas is completely incorrect and is without any basis. That the appellants have not brought anything on record to prove the same. There are more than 2244 MBBS doctors working in the rural areas of Assam; even if there is a shortfall of doctors in the rural areas and the Assam Act aims to remedy the shortfall, the solution lies in increasing their coverage *via* permissible means and not otherwise.

xii. That the State of Assam has consciously and rightly chosen not to challenge the judgment passed by the High Court that struck down the Assam Act and only private individuals are appellants before this court. That the State of Assam has enacted a subsequent legislation and has tried to

accommodate the ousted diploma holders in different capacities. Merely because the appellants before this court are aggrieved by their arrangement in a different capacity under the new legislation, it cannot equip them to sustain the present challenge.

7. Learned Senior Counsel Sri K.M. Natraj appearing for Union of India has also been heard which shall be adverted to later.

Submissions on behalf of Respondent No. 7 (Medical Council of India):

8. Learned Senior Counsel Sri Vikas Singh appearing on behalf of Respondent No. 7, Medical Council of India, submitted as under:

i. Respondent No. 7 submitted that after the impugned judgment dated 30.10.2014 was passed by the High Court, the State of Assam notified the '2015 Act', on 29.05.2015. By virtue of Section 3(2) of the said Act, the Diploma Holders who have completed or are still undergoing the Diploma course in Medicine and Rural Health in the State of Assam under the scheme of Assam Act, have been recognised as "Community Health Professionals" and such Community Health Professionals have been engaged as para-medical professionals assisting the Medical Officers in the State of Assam. Thereafter, the State of Assam has protected the livelihood of the Rural

Health Practitioners by absorbing them as Community Health Professionals under the '2015 Act'. Thus, the future of Rural Health Practitioners has been protected by the State of Assam as they have been employed as Community Health Professional in the State.

ii. That the Central Act i.e., IMC Act, 1956, is relatable to Entry 66 of List I of Seventh Schedule of the Constitution. It is an exhaustive legislation covering all aspects of opening of new or higher courses of medicine, teaching and training, recognition of medical qualification, registration of medical practitioner, eligibility criteria for registration in State Medical Register and practice of modern scientific medicine. Thus, the State Legislature is denuded of the power to make any law as the field is already occupied by the Central Act.

iii. That Section 15(1) of the Central Act prescribes minimum qualification for registration in the State Medical Register. Thus, medical qualification included in the Schedule of the Central Act is the only recognised medical qualification on the basis of which a person's name can be entered in the State Medical Register maintained by the State Medical Council. Further, Section 15(2)(b) of the Central Act makes it unequivocally clear that only those persons who are enrolled

in the State Medical Register are entitled to practice medicine in any State.

iv. That Section 2(d) of the State Act read with Section 15 thereof, and Schedule to the Assam Medical Council Act, 1999, ("AMC Act, 1999", for the sake of convenience) provide that recognised medical qualification for the purposes of registration in the State Medical Register shall mean only those medical qualifications which have been included in Schedule I to the Central Act of 1956. Thus, a combined reading of Section 2(d), Section 15 and Section 31 of the State Act, read with the Schedule to the AMC Act, 1999, makes it unequivocally clear that even the State Legislature of Assam intended that only a person possessing recognised medical qualification under Schedule I of the Central Act, is entitled in law to be entered in the State Medical Register and is allowed to practice modern scientific medicine.

v. That the Assam Act of 2004, was also in direct conflict and inconsistent with the AMC Act, 1999. That Section 31 of the AMC Act, 1999, prohibits practice of modern scientific medicine by any person, except those registered under the State Medical Register maintained by the Assam Medical Council.

vi. Respondent No. 7 next submitted that the provisions of Central Act, 1956, will prevail over the Assam Act, 2004, as Article 246(2) of the Constitution provides that law made by the State Legislature on any subject enumerated in List-III of Seventh Schedule of the Constitution is subject to the law made by the Parliament under Article 246(1). Thus, Entry 25 of List III of Seventh Schedule under which the Assam Act, 2004, had been enacted was subject to the law made by the Parliament under Entry 66 of List I i.e., IMC Act, 1956 which is a Central Legislation.

vii. Respondent No. 7 placed reliance on ***Dr. Preeti Srivastava vs. State of M.P., (1999) 7 SCC 120, ("Dr. Preeti Srivastava")*** to contend that a State Act cannot lower the standards fixed under the Central Act. That in the said case it was held that only the Medical Council of India could determine the lowering of standards or norms and the extent of the same. Therefore, the State of Assam does not have the legislative competence and authority to enact the Assam Act, which has the effect of lowering down the standards.

viii. Respondent No.7 contended that the judgment in ***Dr. Mukhtiar Chand*** was not applicable in the present case. In the said case, it was held that the registration in the State Medical Register relating to modern scientific medicine was a

sine qua non to enable persons, who, otherwise did not possess recognised medical qualification, to practice modern scientific medicine. It was submitted that even if the name of a Diploma Holder was included in the State Register of Rural Health Practitioners as provided under the Assam Act, it will not give them the right to practice modern scientific medicine as per Section 15 of the IMC Act, 1956.

ix. It was further submitted that medical students are required to undergo rigorous teaching and training during the MBBS course which is a five-year course and it is only after they successfully complete the same that they become eligible to get registered in the Indian Medical Register or the State Medical Register and thereafter, they become legally entitled to practice medicine and treat patients. Reliance was placed on ***MCI vs. State of Karnataka, (1998) 6 SCC 131, ("MCI")*** to submit that Rural Health Practitioners were nothing but half-baked doctors who do not possess the requisite knowledge in the field of medicine and have also not received proper training. That Rural Health Practitioners have limited knowledge and experience and hence, cannot be permitted to practice modern scientific medicine and administer medical treatment. It was further submitted that if such Diploma holders are permitted to practice modern scientific medicine, then they would pose a

great threat to society and would degrade the standard of health care system in the country.

Submissions on behalf of the State of Assam:

9. Learned counsel Sri Ananga Bhattacharyya made the following submissions on behalf of the State of Assam:

i. That the Preamble to the IMC Act, 1956 discloses that the said Act is enacted to provide for the reconstitution of Medical Council of India and the maintenance of a Medical Register for India and for matters connected therewith. Section 10A of the said Act provides that, notwithstanding anything contained in the Act or any other law for the time being in force, no person shall establish a medical college; or no medical college shall open a new or higher 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, except with the previous permission of the Central Government. That the permission as contemplated in Section 10A is the permission to open a new or higher 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". As the Diploma in DMRHC as defined in Section 2(e) of the Assam Act is not akin to "recognised medical

qualification" referred to in Section 10A of the IMC Act, 1956, the Assam Act can certainly co-exist. The powers and functions of rural health practitioners as delineated in Section 24 of the Assam Act would go to show that both legislations can co-exist without there being any overlapping.

ii. That a perusal of Regulation 11 framed by the State Authority under the Regulations of Assam Rural Health Regulatory Authority, 2005 would reveal that practice of medicine under the scheme of the State Act has a very limited meaning. Similarly, the word "surgery" has also been assigned a limited scope. Therefore, the underlying purpose is not to encroach upon the field covered by the Central Act but to provide rural health care to the needy persons. In attainment of the aforesaid objectives, if there is any incidental encroachment, the same cannot have the potential of adjudging the Assam Act as *ultra vires*.

iii. That in determining whether an enactment is a legislation with respect to a given power, what is relevant is whether, in its pith and substance, it is a law upon the subject matter in question. Reliance was placed on ***State of Bombay vs. F. N. Balsara, AIR 1951 SC 318, ("F. N. Balsara")*** wherein it was held that mere incidental encroachment on matters which have been

assigned to another legislature does not vitiate the legislation. It was contended that in the instant case, the State Legislature has not made any attempt to encroach upon the field covered by the IMC Act, 1956 by offering qualifications envisaged in Section 2(h) read with First Schedule to the said Act. That the Parliament even after enacting the IMC 1956 Act left out certain grey areas, thus, the Assam Act is an attempt to cover the fields left open by the Parliament.

iv. That when one entry is made 'subject to' another entry, it means that out of the scope of the former entry, a field of legislation covered by the latter entry has been reserved to be specifically dealt with by the appropriate legislature. That what is covered by the Central Act is "recognised medical qualification" within the meaning of Section 2(h) of the Act read with the qualifications included in the First Schedule to the said Central Act and not Diploma in Rural Health Care and Medicine. Therefore, as long as the Parliament does not occupy the field earmarked for it under Entry 66 of List I or for that matter by invoking its concurrent powers under Entry 25 of List III, the question of competence of the State Legislature to regulate and register the Diploma Holders in medicine and

rural health care and their practice of medicine in rural areas cannot be questioned.

v. That repugnancy arises when two enactments, both within the competence of two legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one legislature has superiority over the other, then to the extent of repugnancy one supersedes the other. Reliance was placed on ***Hingir - Rampur Coal Co. Ltd. vs. State of Orissa, AIR 1961 SC 459, ("Hingir - Rampur Coal Co. Ltd.")*** wherein this Court observed that in a case where a declaration is made by the Parliament that it is expedient in the public interest to take over the field, in such a case, the test must be whether legislative declaration covers the field or not. It was submitted on behalf of the State of Assam that in the said case a distinction must be drawn between the Entries in List I wherein a declaration by the Parliament to take over the field is expressed and to other Entries in List I which do not contain such a declaration. That Entry 66 of List I does not contain any such declaration; therefore, it would be appropriate to go by the language of Entry 25 of List III i.e., "subject to". Thus, the test is to find out the true nature and character of the State Legislation. Any

incidental encroachment in the process would not vitiate the State law. Thus, the Assam Act and the Central Act can co-exist within their respective spheres and the provisions of Assam Act are not repugnant to the provisions of the Central Act, hence, there is no requirement of complying with the provisions of Article 254(2) of the Constitution of India.

10. Sri. Rana Mukherjee, learned Senior Counsel appearing for the petitioners in Transferred Case Nos.24 and 25 of 2018 drew our attention to the relief sought for by the petitioners therein and contended that the status and position of the petitioners therein, subsequent to the enactment of the '2015 Act' has been adversely altered. Hence, the petitioners therein have assailed the said Act. He contended that the petitioners therein were imparted medical education under the Assam Act and have been trained under the said Act and are registered as Rural Health Practitioners and have been serving as Rural Health Practitioners in various States. The State of Assam proceeded to enact the impugned Legislation, i.e., the '2015 Act', instead of assailing the judgment of the Gauhati High Court which has struck down the Assam Act thereby, resulting in adverse consequence on the petitioners in these transferred cases. That by enactment of the '2015 Act', the petitioners in these cases are redesignated as Community Health

Officers and thereby their status and position has been downgraded to that of Paramedics, whereas, under the Assam Act, they were registered as Rural Health Practitioners in the State Medical Register. In these circumstances, the petitioners in these cases have sought for continuation of their rights, privileges, status and conditions of service as were provided or granted to them under the Assam Act as Rural Health Practitioners.

Learned counsel submitted that the case of the petitioners in Transferred Cases would be resurrected in the event this Court is to set aside the judgment of the High Court and restore the Assam Act by allowing the Special Leave Petition filed by the similarly situated Rural Health Practitioners in the case of ***Baharul Islam and others***, which is being considered. He further submitted that in the event this Court is to affirm the judgment of the High Court, the *vires* of '2015 Act' is to be considered and the relief sought for by the petitioners in these Transferred Cases may be granted. Learned Senior Counsel also placed reliance on the judgment of this Court in the case of ***Association of Medical Superspeciality Aspirants and Residents and Others v. Union of India and Others.*** (***2019) 8 SCC 607***; paragraphs 25 and 26, to emphasise the importance of rural health which has to be protected by the State.

Points for consideration:

Having heard the learned counsel for the respective parties and on perusal of the material on record, the following points would arise for our consideration:

i) Whether the Assam Act is invalid and null and void on the ground that the Assam State Legislature did not possess legislative competence to enact the said Act?

ii) Whether the '2015 Act' is *ultra vires* the Constitution?

iii) What Order?

Constitutional Scheme

11. Before proceeding, it would be useful to refer to the constitutional scheme relevant to the issues which arise in these cases.

11.1. For easy and immediate reference, the relevant provisions of the Constitution of India are extracted as under:

> *"***246. Subject matter of laws made by Parliament and by the Legislatures of States** - *(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").*
>
> *(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make*

laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

***

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States *- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.*
*(2) Where a law made by the Legislature of a State 1 *** with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:*

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

11.2. It is also useful to refer to Entry 66 of List I (Union List) and Entry 25 of List III (Concurrent List) of the Seventh Schedule of the Constitution of India. The same read as under: -

Entry 66 of List I -Union List

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

***

Entry 25 of 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 of labour."

11.3. We shall now dilate on the aspect of interpretation of legislative Entries in the context of List I and List III of the Seventh Schedule of the Constitution of India referred to above. The power to legislate which is dealt with under Article 246 has to be read in conjunction with the Entries in the three Lists which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope

to their meaning, particularly, when the *vires* of a provision of a statue is assailed. In such circumstances, a liberal construction must be given to the Entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the entry within which it would fall. The doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, the same cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which Entry, a piece of legislation could be related. If there is any trenching on the field reserved to another legislature, the same would be of no consequence. In order to examine the true character of enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and objects. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

11.4. In case of any conflict between Entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance falls within any of the Entries of List II, the State Legislature's competence cannot be questioned on the ground that the field is covered by Union list or the Concurrent list *vide* ***Prafulla Kumar Mukherjee vs. Bank of Commerce, Khulna, AIR 1947 P.C. 60, ("Prafulla Kumar Mukherjee").*** According to the pith and substance rule, if a law is in its pith and substance within the competence of the Legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another Legislature *vide* ***State of Bombay vs. F.N. Balsara, AIR 1951 SC 318.***

11.5. In ***Atiabari Tea Company Ltd. vs. State of Assam, AIR 1961 SC 232***, **(*"Atiabari Tea Company Ltd.")*** it has been observed by this Court that the test of pith and substance is generally and more appropriately applied when a dispute arises as to the legislative competence of the Legislature and it has to be resolved by reference to the Entries to which the impugned legislation is relatable. When a question of legislative competence is raised, the test is to look at the legislation as a whole and if it has a substantial and not merely a remote connection with the Entry, the same may well be taken to be a legislation on the topic *vide*

Ujagar Prints vs. Union of India, AIR 1989 SC 516, ("Ujagar Prints").

11.6. The expression used in Article 246 is '***with respect to***' any of the matters enumerated in the respective Lists. The said expression indicates the ambit of the power of the respective Legislature to legislate as regards the subject matters comprised in the various Entries included in the legislative Lists. For instance, where an Entry describes an object of tax, all taxable events pertaining to the object are within that field of legislation unless the event is specifically provided for elsewhere under a different legislative Entry. Thus, the Court has to discover the true character and nature of the Legislation while deciding the validity of a legislation. Applying the doctrine of pith and substance while interpreting the legislative Lists what needs to be seen is whether an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it. If it does, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature *vide* ***FN Balsara***.

11.7. In ***Ujagar Prints***, it was observed that the Entries in the legislative Lists must receive a liberal construction inspired by a broad and generous spirit and not in a narrow and pedantic

manner. This is because the Entries are not sources of legislative power but are merely topics or fields of Legislation. The expression '***with respect to***' in Article 246 brings in the doctrine of pith and substance in the understanding of the exertion of the legislative power and wherever the question of legislative competence is raised, the test is whether the Legislation, looked at as a whole, is substantially '***with respect to***' the particular topic of Legislation. For applying the principle of pith and substance, regard must be had (i) to the enactment as a whole, (ii) to its main object, and (iii) to the scope and effect of the provision.

11.8. Once the Legislation is found to be '***with respect to***' the legislative Entry in question unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of Legislation *vide* ***United Provinces vs. Atiqa Begum, AIR 1941 FC 16, ("United Provinces")***.

11.9. Another important aspect while construing the Entries in the respective Lists is that every attempt should be made to harmonise the contents of the Entries so that interpretation of one Entry should not render the entire content of another Entry nugatory *vide* ***Calcutta Gas Company vs. State of West***

Bengal, AIR 1962 SC 1044, ("Calcutta Gas Company"). This is especially so when some of the Entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other, in such a situation, a duty is cast on the Court to reconcile the Entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both Entries and thereby arrive at a reconciliation or harmonious construction of the same. In other words, a construction which would reduce one of the Entries nugatory or dead letter, is not to be followed.

11.10. The sequitur to the aforesaid discussion is that if the Legislature passes a law which is beyond its legislative competence, it is a nullity ab-initio. The Legislation is rendered null and void for want of jurisdiction or legislative competence *vide* ***RMDC vs. Union of India, AIR 1957 SC 628, ("RMDC").***

11.11. Under the Seventh Schedule of the Constitution, Lists I & II are divided essentially into two groups: One, relating to the power to legislate on specified subjects and the other, relating to the power to tax. In ***Hoechst Pharmaceuticals Ltd. vs. State of Bihar, AIR 1983 SC 1019***, ***("Hoechst Pharmaceuticals Ltd.")***, it has been categorically held that taxation is considered as a distinct matter for purposes of legislative competence.

11.12. Having regard to the aforesaid discussion, we now answer the points for consideration. While doing so, the following approach is being adopted with regard to the interpretation of the Entries of the Lists of the Seventh Schedule of the Constitution:

i) The Entries in the different Lists should be read together without giving a narrow meaning to any of them. The powers of the Union and the State Legislatures are expressed in precise and definite terms. Hence, there can be no broader interpretation given to one Entry than to the other. Even where an Entry is worded in wide terms, it cannot be so interpreted as to negate or override another Entry or make another Entry meaningless. In case of an apparent conflict between different Entries, it is the duty of the Court to reconcile them in the first instance.

ii) In case of an apparent overlapping between two Entries, the doctrine of pith and substance has to be applied to find out the true nature of a legislation and the Entry within which it would fall.

iii) Where one Entry is made 'subject to' another Entry, all that it means is that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature.

iv) When one item is general and another specific, the latter will exclude the former on a subject of legislation. If, however, they cannot be fairly reconciled, the power enumerated in List II must give way to List I.

v) On a close perusal of the Entries in the three Lists of the Seventh Schedule of the Constitution, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories: (i) Entries enabling laws to be made; (ii) Entries enabling taxes to be imposed; and (iii) Entries enabling fees and stamp duties to be collected. Thus, the entries on levy of taxes are specifically mentioned. Therefore, per se, there cannot be a conflict of taxation power of Union and the State.

Contentions on behalf of the Union of India:

12. In this context, learned ASG appearing for Union of India Sri Natraj submitted that there is a two-fold restriction on the field in which the Assam State Legislature can enact a law as far as medical education is concerned: the first is that any State law dealing with medical education must be subject to Entry 66 of List I which deals with coordination and determination of standards. That any law to be made by the Assam State Legislature or for that matter any State Legislature in the context of education, particularly, medical

education would be subjected to Entry 66 of List I. The second restriction on a law to be made by a State Legislature is in exercise of its concurrent power with Parliament under Entry 25 of List III which must not be a law which is repugnant to a Central Legislation and that the parameters of Article 254 would apply accordingly. He contended that even before testing the validity of a legislation made under Entry 25 of List III, it is necessary to, in the first instance, consider as to whether the State Legislation impinges upon any Central law which is in the realm of coordination and determination of standards as envisaged in Entry 66 of List I. According to him, if that is so, then the law made by the Parliament is the Central law which in pith and substance is within the four corners of Entry 66 of List I and would supersede any law made by a State legislature as per Entry 25 of List III. But if an enactment does not trench upon the subject mentioned in Entry 66 of List I and a State Legislature enacts such a law within the legislative competence of Entry 25 of List III in such a case the only test to be applied is whether such a State Legislation is repugnant to any Central Legislation which has also been made relatable to Entry 25 of List III. If that is so, then the State Legislation being repugnant to the Central law would be null and void unless it has received presidential assent as envisaged under sub-clause (2) of Article 254 of the Constitution.

13. Sri Natraj contended that, in the instant case, the IMC Act, 1956 is an enactment, which in pith and substance is, within the four corners of Entry 66 of List I and is a Central Legislation in the mater of coordination and determination of standards in medical education applicable throughout the Country and hence, the State Law which is in direct conflict with the Central Law cannot muster constitutionality. Hence, it must fail and be declared null and void. This is because a State law within the parameters of Entry 25 of List III is subject to Entry 66 of List I and therefore, the State law must yield to the Central law. Learned ASG contended that such an arrangement under the Constitution points towards federal supremacy having regard to Article 246 of the Constitution.

14. Therefore, according to Sri Nataraj, learned ASG, the State law is null and void and has been rightly struck down by the Division Bench of the Gauhati High Court. He, however, contended that the High Court has applied the doctrine of repugnancy to strike down the State enactment which was wholly unnecessary. Though the reasoning may not be appropriate, the conclusion is correct. Bearing in mind the aforesaid submissions of the learned ASG, we may proceed to consider the matter further.

Interplay between Entry 66 of List I and Entry 25 of List III:

15. Since these appeals concern interpretation, *inter alia*, of Entry 66 of List I and Entry 25 of List III, it would be useful to refer to the following decisions of this Court, which examine the interplay of the aforesaid Entries:

i) In ***Gujarat University, Ahmedabad vs. Shri Krishna Ranganath Mudhoklar, AIR 1963 SC 703***, ***("Gujarat University, Ahmedabad")*** the contest before a Constitution Bench of this Court pertained to the fixation of an exclusive medium of instruction in University Education and the Legislative competence of the State Legislature to do so. This Court considered, *inter alia*, the question as to whether the Gujarat University Act, 1949, which authorized the University to prescribe Gujarati or Hindi or both as an exclusive medium of instruction and examination in the affiliated colleges, would infringe Entry 66 of List I. One of the arguments raised in that case was that under Entry 66 of List I of the Seventh Schedule the power of co-ordination and determination of standards in institutions for higher education or research in scientific and technical institutions was conferred upon Parliament and that these matters must be regarded as having been excluded from Entry 11 of List II (as it then stood), which read thus:

"Education, including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III."

Addressing such a contention, J.C. Shah, J., speaking for the majority (Subba Rao J. dissenting) observed that the power of the State Legislature to legislate with respect to higher scientific and technical education and vocational and technical training of labour, is controlled by the five items in List I and List III mentioned in Entry 11 of List II. Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in the Parliament. That power of the State to legislate in respect of education including Universities must, to the extent to which it is entrusted to the Parliament, be deemed to be restricted. It was further observed that 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," as covered under Entry 11 of List II, the power to legislate on that subject must lie only with the Parliament. Acknowledging that Entry 11 of List II and Entry 66 of List I undoubtedly overlap, it was held that the said entries must be harmoniously construed and 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. The Majority on the Bench concluded that the power,

having regard to the width of those items, must be deemed to vest with the Union. Power to legislate in respect to medium of instruction, in so far it has a direct bearing and impact upon the legislative head of co-ordination and determination of standards in institutions of higher education or research and scientific and technical institutions, must also be deemed by virtue of Entry 66 of List I, to be vested with the Union. This Court rejected the argument that prescribing the medium of instruction is not a matter falling within determination and coordination of standards of higher education in Entry 66 of List I. It held expressly that it is within the purview of the said Entry. Accordingly, it was held that the State Legislature was not competent to legislate in that behalf.

ii) In ***State of Tamil Nadu vs. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104, ("Adhiyaman Educational and Research Institute")*** this Court considered the question, whether, even after the coming into force of the All-India Council for Technical Education Act, 1987, which is a Parliamentary enactment, the State Government had the power to grant and withdraw permission to start a technical institution, acting under the Tamil Nadu Private College (Regulation) Act, 1976, and the statutes and ordinances framed thereunder. The facts leading to the controversy were that the

Respondent Institution applied to the Government of Tamil Nadu for permission to start a new self-financing private Engineering College in terms of a Government Memorandum dated 17th April 1984, which permitted private managements to start new Engineering Colleges under the self-financing scheme without any financial commitment to the Government, but subject to the fulfilment of certain conditions. The State Government by its order of 9th June, 1987, granted permission to the Trust to start a private Engineering College under the name and style of Adhiyaman College of Engineering at Hosur in Dharmapuri district, beginning with the academic year 1987-88. One of the conditions imposed by the Government was that the institution could admit candidates of its choice upto 50 per cent of the approved intake under the management quota, and the remaining 50 per cent of the seats would be allotted by the Director of Technical Education from among the candidates of the approved list prepared for admission to Government and Government-aided Engineering Colleges. The Government had also stipulated that if any of the conditions imposed by them was not fulfilled, the permission granted to start the College would be withdrawn. In July, 1989, the University sent a communication to the Respondent institution informing them that the Syndicate had accepted the report of

the High Power Committee appointed by the Government and it resolved to reject the request of the institution for provisional affiliation for 1989-90 for the first year and also the request for provisional affiliation for second and third year courses for 1989-90. By way of the said communication, the Respondent was also informed that they should make alternative arrangement to distribute the students already admitted to the academic year 1987-88 and 1988-89 among other institutions with adequate facilities. A challenge to the communication and the resolution passed by the Syndicate of the University accepting the report of the High Power Committee appointed by the Government, was carried before the High Court, and ultimately became the subject of challenge before this Court. The larger question before this Court in the said case was as regards the conflict between the All-India Council for Technical Education Act, 1987 and the Tamil Nadu Private College [Regulation] Act, 1976, in so far as the State Act provided significantly different and more stringent yardsticks to be complied with by technical universities seeking recognition, as compared to the Central enactment.

In that background, this Court undertook analysis of the scope of Entry 66 of List I and Entry 25 of List III and culled out the following principles:

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

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

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

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[v] When there are more applicants than the available situations/seats, the State

> authority is not prevented from laying down higher standards or qualifications than those laid down by the centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.
>
> [vi] However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally."

Adverting to the facts of the said case, this Court ruled that the provisions of the Central statute on the one hand and of the State statutes on the other, being inconsistent and therefore, repugnant to each other, the Central statute will prevail and the derecognition by the State Government or the disaffiliation by the State University on grounds which are inconsistent with those enumerated in the Central statute were declared to be inoperative. It was observed that there was no material on record which would demonstrate that the standards laid down by the Central Act are inadequate to ensure that the colleges eligible for recognition as per the

Central Act are able to successfully conduct the relevant courses. Hence, it was held that the State Government did not have the discretion to reject permission granted to any technical institution, or derecognise the institution because such institution has failed to satisfy the conditions laid down by the State, which were inconsistent with those enumerated in the Central statute.

iii) In ***Preeti Srivastava vs. State of Madhya Pradesh, AIR 1999 SC 2894, ("Preeti Srivastava")*** this Court considered the question, whether, it was open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission to the post-graduate medical courses under the reserved seats category as compared to the general category candidates. This Court observed that both the Union as well as the States have the power to legislate on education including medical education, subject, *inter alia*, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any

Union Legislation. It was further observed that the State cannot, while controlling education in the State, impinge on standards in institutions for higher education because that 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. That since norms for admission can have a direct impact on the standards of education, only such norms or rules may be prescribed which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. By way of illustration, it was stated that a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. That such a rule would be consistent with promoting higher standards for admission to the higher educational courses; but any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. It was declared that it is within the legislative competence of the State Legislature, in exercise of power under Entry 25 of the Concurrent List to prescribe higher educational qualifications

and higher marks for admission in addition to the one fixed by the Indian Medical Council in order to bring out the higher qualitative output from the students who pursue medical course. The following factors were listed, which are non-exhaustive, which determine the standard of education in an institution:

> "(1) The calibre of the teaching staff;
>
> (2) A proper syllabus designed to achieve a high level of education in the given span of time;
>
> (3) The student-teacher ratio;
>
> (4) The ratio between the students and the hospital beds available to each student;
>
> (5) The calibre of the students admitted to the institution;
>
> (6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
>
> (7) Adequate accommodation for the college and the attached hospital; and
>
> (8) The standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

It was concluded in the said case that whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the post-graduate level of

medical education was a question which must be decided by the Medical Council of India since it affects standards of post-graduate medical education. That even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at the level of post-graduation.

iv) In ***Modern Dental College and Research Centre vs. State of Madhya Pradesh, (2016) 7 SCC 353, ("Modern Dental College and Research Centre")*** this Court was called upon to adjudicate upon a challenge to the *vires* of the Niji Vyavasayik Shikshan Sanstha (Pravesh Ka Viniyaman Avam Shulk Ka Nirdharan) Adhiniyam, 2007, read with the Madhya Pradesh Private Medical and Dental Post Graduate Courses Entrance Examination Rules, 2009. The said Act and Rules were framed primarily to regulate the admission of students in post graduate courses in private professional educational institutions and also contained provisions for fixation of fee and reservation of seats in such colleges. A challenge was laid by the Appellants therein, which were unaided private medical and dental colleges, to those provisions of the Act and Rules, which sought to regulate admission, fixation of fee, reservation

and eligibility criteria. The arguments raised by the Appellants therein before this Court were founded, *inter alia*, on power of the State to enact such a legislation. It was argued that the matter of admission in higher educational institutional falls within the purview of Entry 66 of List I to the Seventh Schedule of the Constitution and is not covered under Entry 25 of List III of Seventh Schedule. In that background, this Court undertook an analysis of the scope and ambit of Entry 66 of List I, relative to Entry 25 of List III.

This Court held that Entry 66 of List I is a specific Entry having a very specific and limited scope. It deals with co-ordination and determination of standards in institution of higher education or research as well as scientific and technical institutions. Thus, when it comes to prescribing the standards for such institutions of higher learning, exclusive domain is given to the Union. That such co- ordination and determination of standards, insofar as medical education is concerned, is achieved by Parliamentary legislation in the form of Medical Council of India Act, 1956 and by creating the statutory body like Medical Council of India.

With reference to Entry 25 of List III, it was observed that regulating 'education' as such, which includes medical education as well as universities, is a matter under the

concurrent list. That earlier, education, including university education, was the subject matter of Entry 11 of List II. Thus, power to this extent was given to the State Legislatures. However, this Entry was omitted by the Constitution (Forty-Second Amendment) Act, 1976 with effect from 03 July, 1977 and at the same time Entry 25 of List II was amended. Education, including university education, was thus transferred to Concurrent List and in the process technical and medical education was also added within the scope of Entry 25 of List II.

With that preface, it was observed in the said case that on a harmonious reading of Entry 66 of List I and Entry 25 of List III, it would become manifest. That in matters concerning co-ordination and laying down of standards in higher education or research and scientific and technical institutions, power rests with the Union/Parliament to the exclusion of the State Legislatures. However, in so far as other facets of education, including technical and medical education, as well as governance of universities are concerned, even State Legislatures are vested with power by virtue of Entry 25 of List III of the Seventh Schedule of the Constitution. That the field covered by Entry 25 of List III is wide enough and as

circumscribed to the limited extent of it being subject to Entries 63, 64, 65 and 66 of List I.

It was observed that most educational activities, including admissions, have two aspects: the first of such aspects being the adoption and setting of the minimum standards of education. That it was essential to lay down a uniform minimum standard for the nation, with a view to provide a benchmark quality of education being imparted by various educational institutions across the country. To this end, Entry 66 of List I was formulated with the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

The Court went on to observe that the second aspect of regulation of education is with regard to the implementation of the standards of education determined by Parliament, and the regulation of the complete activity of education. This activity necessarily entails the application of the standards determined by Parliament in all educational institutions in accordance with the local and regional needs. Therefore, it was held that while Entry 66 of List I dealt with determination and co-ordination of standards, on the other hand, the original Entry 11 of List II granted the States the exclusive power to legislate with respect to all other aspects of education, except the

determination of minimum standards and co-ordination which was in national interest. Subsequently, *vide* the Constitution (Forty-second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to education was removed and deleted, and the same was replaced by amending Entry 25 of List III granting concurrent powers to both Parliament and State Legislature the power to legislate with respect to all other aspects of education, except that which was specifically covered by Entries 63 to 66 of List I.

In a concurring judgment, Bhanumati J. in paragraphs 131 to 134 and 147 to 149, has held as under:

> "131. In order to answer the concern of other Constitution Framers, Dr Ambedkar went on to clarify the limited scope of List I Entry 66 (as in the present form), as proposed by him in the following words: (CAD Vol. 9, p. 796)
>
> > Entry 57-A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "why this entry?" I shall show why it is necessary. Take for instance, the BA Degree examination which is conducted by the different universities in India. Now, most provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the BA

> Examination, if he obtained 15% of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20% of marks shall be deemed to have passed the BA degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously, you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognised either for the Central purposes, for all- India purposes or the purposes of the State.

132. The intent of our Constitution Framers while introducing Entry 66 of the Union List was thus limited only to empowering the Union to lay down a uniform standard of higher education throughout the country and not to bereft the State Legislature of its entire power to legislate in relation to "education" and organising its own common entrance examination.

133. If we consider the ambit of the present Entry 66 of the Union List; no doubt the field of legislation is of very wide import and determination of standards in institutions for higher education. In the federal structure of India, as there are many States, it is for the Union to coordinate between the States to cause them to work in the field of higher education in

their respective States as per the standards determined by the Union. Entry 25 in the Concurrent List is available both to the Centre and the States. However, power of the State is subject to the provisions of Entries 63, 64, 65, and 66 of the Union List; while the State is competent to legislate on the education including technical education, medical education and universities, it should be as per the standards set by the Union.

134. The words "coordination" and "determination of the standards in higher education" are the preserve of Parliament and are exclusively covered by Entry 66 of the Union List. The word "coordination" means harmonisation with a view to forge a uniform pattern for concerted action. The term "fixing of standards of institutions for higher education" is for the purpose of harmonising coordination of the various institutions for higher education across the country. Looking at the present distribution of legislative powers between the Union and the States with regard to the field of "education", that State's power to legislate in relation to "education, including technical education, medical education and universities" is analogous to that of the Union. However, such power is subject to Entries 63, 64, 65 and 66 of the Union List, as laid down in Entry 25 of the Concurrent List. It is the responsibility of the Central Government to determine the standards of higher education and the same should not be lowered at the hands of any particular State.

xxx xxx xxx xxx

147. Another argument that has been put forth is that the power to enact laws laying down process of admission in universities, etc. vests in both Central and State Governments under Entry 25 of the Concurrent List only. Under Entry 25 of the Concurrent List and erstwhile

Entry 11 of the State List, the State Government has enacted various legislations that inter alia regulate admission process in various institutions. For instance, Jawaharlal Nehru Krishi Vishwavidyalaya Adhiniyam, Rajiv Gandhi Prodyogiki Vishwavidyalaya Adhiniyam, Rashtriya Vidhi Sansathan Vishwavidyalaya Adhiniyam, etc. were established by the State Government in exercise of power under Entry 25 of the Concurrent List. Similarly, the Central Government has also enacted various legislations relating to higher education under Entry 25 of the Concurrent List pertaining to Centrally funded universities such as the Babasaheb Bhimrao Ambedkar University Act, 1994, the Maulana Azad National Urdu University Act, 1996, the Indira Gandhi National Tribal University Act, 2007, etc. The Central Government may have the power to regulate the admission process for Centrally funded institutions like IITs, NIT, JIPMER, etc. but not in respect of other institutions running in the State.

148. In view of the above discussion, it can be clearly laid down that power of the Union under Entry 66 of the Union List is limited to prescribing standards of higher education to bring about uniformity in the level of education imparted throughout the country. Thus, the scope of Entry 66 must be construed limited to its actual sense of "determining the standards of higher education" and not of laying down admission process. In no case is the State denuded of its power to legislate under List III Entry 25. More so, pertaining to the admission process in universities imparting higher education.

149. I have no hesitation in upholding the vires of the impugned legislation which empowers the State Government to regulate admission process in institutions imparting higher education

> within the State. In fact, the State being responsible for welfare and development of the people of the State, ought to take necessary steps for welfare of its student community. The field of "higher education" being one such field which directly affects the growth and development of the State, it becomes prerogative of the State to take such steps which further the welfare of the people and in particular pursuing higher education. In fact, the State Government should be the sole entity to lay down the procedure for admission and fee, etc. governing the institutions running in that particular State except the Centrally funded institutions like IIT, NIT, etc. because no one can be a better judge of the requirements and inequalities-in-opportunity of the people of a particular State than that State itself. Only the State legislation can create equal level playing field for the students who are coming out from the State Board and other streams."

v) In ***Chintpurni Medical College and Hospital vs. State of Punjab and Ors., AIR 2018 SC 3119*, ("*Chintpurni Medical College and Hospital")*** this Court considered the question, whether, a State Government can withdraw an Essentiality Certificate once granted to a medical college and whether such power is *ultra vires* the Central Act. An essentiality certificate is required to be issued by the State Government within the territory of which the medical college is proposed to be established, certifying the need in the subject state, of a medical college. The concerned State Government is required to certify that it has decided to issue an essentiality certificate

for the establishment of a medical college with a specified number of seats in public interest, and further that such establishment is feasible. In examining whether such certificate, which is required to be secured by a college before seeking permission under Section 10A of the IMC Act, 1956, could be subsequently cancelled by the State, this Court held that the only purpose of the essentiality certificate is to enable the Central Government acting under Section 10A to take an informed decision for permitting the opening or establishment of a new medical college. Once the college is established, its functioning and performance and even the de-recognition of its courses is controlled only by the provisions of the Central Act and not any other law. That it would therefore be impermissible to allow any authority including a State Government which merely issues an essentiality certificate, to exercise any power which could have the effect of terminating the existence of a medical college permitted to be established by the Central Government.

As regards the power of the Parliament under Entry 66 of List I, as juxtaposed with the power with the State Legislatures under Entry 25 of List III, this Court made the following observations:

> "The IMC Act, which is a Legislation under Entry 66 of List I of Seventh Schedule of the Constitution of India is a complete code which governs the establishment, functioning, including maintenance of standards of education and even de-recognition of Medical Colleges *vide* Section 19 of the Act. The States are denuded of the Legislative Power to legislate on medical education under Entry 25 of the Concurrent List since Parliament has exercised its power under Entry 66 and enacted the IMC Act"

vi) In ***Tamil Nadu Medical Officers Association vs. Union of India, (2021) 6 SCC 568***, ***("Tamil Nadu Medical Officers Association")*** a Constitution Bench of this Court, considered the question, whether, under the scheme of the Constitution of India and the provisions of the IMC Act, 1956, read with the Medical Council of India Postgraduate Medical Education Regulations, 2000, a State has the legislative competence to enact legislation to provide for reservation of seats for admission in postgraduate medical courses, in favour of medical professionals working in government organisations within the State. In other words, the question before the Court pertained to the legislative competence of the states to make reservation for in-service doctors in the State quota in post graduate degree/diploma medical courses.

The primary contention of the Petitioners therein was that while co-ordination and determination of standards in

institutions for higher education falls within the exclusive domain of the Union, under Entry 66 of List I, medical education is a subject in the Concurrent list, i.e., under Entry 25 of List III. That though Entry 25 of List III is subject to Entry 66 of List I, the State is not denuded of its power to legislate on the manner and method of making admissions to post-graduate medical courses. The case of the Petitioners therein was that the competence of the State Government to make reservation for post-graduate seats in medical colleges, in favour of in-service candidates, is traceable to Entry 25 of List III, *vide* ***Modern Dental College.*** That since there was no plenary law by the Centre to provide for any reservation for in-service candidates, it would be competent for the State Governments to provide for a reservation for in-service candidates. That in the absence of a Central law governing the field, it would be open to the State Government to enact a legal instrument to provide reservation for in-service candidates.

This Court deliberated on the scope and ambit of Entry 66 of List I, and also on the question as to whether, in view of the said Entry, the State Legislature is denuded of its power to legislate on the manner and method of admissions into post-graduate medical courses. Referring to the dictum of this Court in ***Modern Dental College*** wherein it was held that Entry 66

of List I is specific and limited in scope, this Court observed that the said Entry pertains specifically and exclusively to the prescription of standards for higher education and research institutions and the scope of such Entry would not extend to matters such as conduct of examination, prescribing course fee or admission of students. It was therefore declared that in exercise of powers under Entry 66 of List I, the Union cannot provide for anything with respect to reservation/ percentage of reservation and/or mode of admission within the State quota, which powers are conferred upon the States under Entry 25 of List III.

Further, referring to the provisions of the IMC Act, 1956 and more particularly, Section 33 thereof, which provides for the power of the Council to make regulations, this Court held that the said provision does not confer any authority or power to frame regulations with respect to reservation in medical courses. Therefore, in the absence of a Central Law governing the field, it would be open to the State Government to make provision for reservation by legislating on the strength of Entry 25 of List III. This Court, therefore, concluded that that Entry 66 of List I is a very specific Entry having limited scope and that the no provision for reservation for in service candidates could be made under the said Entry; that power to legislate on

such matter is traceable to Entry 25 of List III of the Seventh Schedule of the Constitution.

Aniruddha Bose J. in a separate but concurring judgment observed that although the students who would gain admission into the post-graduate courses as a part of the in-service quota, may not have been admitted purely based on a uniform order of merit, and this might, to some degree have an effect on the overall standard of medical education, the term "standards" in Entry 66 of List I must not be construed in such a manner. That the phrase "coordination and determination of standards" as appearing in Entry 66 of List I should be construed as the standard of education and other institutional standards which are to be complied with. Therefore, it was held that reservation in favour of in-service candidates, would in no way be regulated under Entry 66 of List I.

16. Bearing in mind the aforesaid discussion, we shall proceed to consider the scheme of the legislations relevant to these appeals.

16.1. The field of legislation covered under Entry 25 of List III is ***subject to*** Entries 63, 64, 65 and 66 of List I. It is, therefore, necessary to dilate on the effect of providing that one Entry or provision is 'subject to' another. As per **Black's Law Dictionary, 5th Edition**, **Pg. 1278**, "subject to" means *"liable, subordinate,*

subservient, inferior, obedient to, governed or affected by." The following decisions would illustrate the above meanings of the phrase 'subject to':

i) In ***K.R.C.S. Balakrishna Chetty & Sons & Co. vs. The State of Madras, AIR 1961 SC 1152, ("K.R.C.S. Balakrishna Chetty & Sons & Co.")*** this Court observed that the expression "subject to" has reference to effectuating the intention of the law and the correct meaning, of the phrase is, "conditional upon".

ii) Similarly, in ***The South India Corporation (P) Ltd. vs. The Secretary, Board of Revenue Trivandrum and Ors., AIR 1964 SC 207, ("The South India Corporation (P) Ltd.")*** this court observed that the expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. This understanding of the phrase "subject to" has been affirmed in ***K.T. Plantation (P) Ltd. vs. State of Karnataka, (2011) 9 SCC 1, ("K.T. Plantation (P) Ltd.").***

iii) In ***Ashok Leyland Ltd. vs. State of Tamil Nadu and Anr., (2004) 3 SCC 1, ("Ashok Leyland Ltd.")*** this Court held that, *"'Subject to' is an expression whereby limitation is expressed."*

16.2. In the facts of the present case, the Assam Act would be subject to the provisions of the Central Act. This is because the Assam Act is stated to be enacted on the strength of Entry 25 of List III, and the power of the State Legislature under the said Entry is circumscribed to the limited extent of it being subject to Entries 63, 64, 65 and 66 of List I.

16.3. Where one Entry is made 'subject to' another Entry, it means that out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature. In the present context, the field of legislation covered under Entry 25 of List III is subject to Entry 66 of List I. This would imply that out of the scope of Entry 25 of List III, a field of legislation covered by Entry 66 of List I is reserved to be dealt with by the Parliament. Hence, the field covered by the Central Act, enacted under Entry 66 of List I, is carved out of the scope of Entry 25 of List III and is reserved to be dealt with by the Parliament. What is that field of legislation has to be identified. We shall proceed to undertake the said exercise by considering both the Central as well as the State enactments.

Indian Medical Council Act, 1956 (IMC Act, 1956) (Central law)

17. The relevant provisions of the Indian Medical Council Act, 1956 ('IMC Act, 1956'), read as under:

> **Preamble** – An Act 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.
>
> x x x
>
> "**2. Definitions.**- In this Act, unless the context otherwise requires,-
>
> (a) "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 his course of study before the award of anymedical qualification to him;
>
> x x x
>
> (d) "Indian Medical Register" means the medical register maintained by the Council;
>
> (e) "medical institution" means any institution, within or without India, which grants degrees, diplomas or licences in medicine;
>
> (f) "medicine" means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery;
>
> x x x
>
> (h) "recognised medical qualification" means any of the medical qualifications included in the Schedules;
>
> x x x

(k) "State Medical Register" means a register maintained under any law for the time being in force in any State regulating the registration of practitioners of medicine;

x x x

10A. Permission for establishment of new medical college, new course of study.—

(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 section, "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.

x x x

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

(1) Where any medical college is established 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 shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate 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 such study or training shall be a recognised medical qualification for the purposes of this Act.

(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.

x x x

11. Recognition of medical qualifications granted by Universities or medical institutions in India.—

(1) The medical 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 Act.

(2) 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 Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

x x x

13. Recognition of medical qualifications granted by certain medical institutions whose qualifications are not included in the First or Second Schedule.—

(1) The medical qualifications granted by medical institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(2) The medical qualifications granted to a citizen of India—

(a) before the 15th day of August, 1947, by medical institutions in the territories now forming part of Pakistan, and

(b) before the Ist day of April, 1937, by medical institutions in the territories now forming part of Burma,

which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act.

(3) The medical qualifications granted by medical institutions outside India before such date as the Central Government may, by notification in the Official Gazette, specify which are included in Part II of the Third Schedule shall also be recognised medical qualifications for the purposes of this Act, but no person possessing any such qualification shall be entitled to enrolment on any State Medical Register unless he is a citizen of India and has undergone such practical training after obtaining that qualification as may be required by the rules or regulations in force in the country granting the qualification, or if he has not undergone any practical training in that country he has undergone such practical training as may be prescribed.

x x x

15. Right of persons possessing qualifications in the Schedules to be enrolled.—

(1) Subject to the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register.

(2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register,—

(a) shall hold office as physician or surgeon or any other office (by whatever designation called) in Government or in any institution maintained by a local or other authority;

(b) shall practise medicine in any State;

(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner;

(d) shall be entitled to give evidence at any inquest or in any court of law as an expert under section 45 of the Indian Evidence Act, 1872 (1 of 1872) on any matter relating to medicine.

(3) Any person who acts in contravention of any provision of sub-section (2) shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

x x x

19A. 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 any 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 the copies as 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.

x x x

21. The Indian Medical Register.—

(1) The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.

(2) It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council, and from time to time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed.

(3) Such register shall be deemed to be a public document within the meaning of the India Evidence Act, 1872 (1 of 1872) and may be proved by a copy published in the Gazette of India.

22. Supply of copies of the State Medical Registers.—

Each State Medical Council shall supply to the Council six printed copies of the State Medical Register as soon as may be after the commencement of this Act and subsequently after the first day of April of each year, and each Registrar of a State Medical Council shall inform the Council without delay of all additions to and other amendments in the State Medical Register made from time to time.

23. Registration in the Indian Medical Register.—

The Registrar of the Council may, on receipt of the report of registration of a person in a State

> Medical Register or on application made in the prescribed manner by any such person, enter his name in the Indian Medical Register:
>
> Provided that the Registrar is satisfied that the person concerned possesses a recognised medical qualification."

17.1. On a conjoint reading of the aforesaid provisions, it is noted that the IMC Act, 1956, is an Act which repealed the erstwhile Act of 1933 with the object of providing for the reconstitution of the Medical Council of India and for the maintenance of a Medical Register for India and for matters connected therewith. There are two significant provisions which require consideration under this Act in the instant case: first is Section 10A and the second is Section 15. However, while considering the aforesaid Sections in detail, it would be worthwhile to refer to other relevant provisions of the IMC Act, 1956.

17.2. From the point of view of opening of a new medical institution as defined under Section 2(e), Section 10A becomes relevant. It begins with a *non-obstante* clause and states that notwithstanding anything contained in the IMC Act, 1956 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 and Explanation 2 define the expression "person" and expression "admission capacity" respectively. Although, the expression "medical institution" has been defined in Section 2(e) to mean any institution, which grants degrees, diplomas or licences in medicine within or outside India, the expression "medical college" has not been defined. But in our view, the said expressions could be read interchangeably. Section 10A was inserted by the Act of 1993 with effect from 27.08.1992.

17.3. Thus, a condition precedent has been incorporated by an amendment to the IMC Act, 1956, with regard to opening of any medical institution/college in India which is, the seeking of previous permission of the Central Government in accordance with the procedure prescribed under Section 10A. In fact, this position is highlighted on a reading of Section 10B which states that if a medical qualification is granted to any student of a medical college which has been established *de hors* the provisions of Section 10A,

no such qualification shall be recognised under the said Act. The phrase "recognised medical qualification" is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules. There are three Schedules to the IMC Act, 1956. The **First Schedule** deals with recognised medical qualifications granted by the Universities or Medical Institutions in India. The **Second Schedule** speaks of recognised medical qualifications granted by Medical Institutions outside India while the **Third Schedule** deals with recognised medical qualifications granted by Medical Institutions not included in the First Schedule.

17.4. In this context, Sections 11 and 13 are also relevant. Sub-section (1) of Section 11 states that the medical qualifications granted by any University or Medical Institution in India which is included in the First Schedule, shall be recognised medical qualification for the purposes of the said Act. Sub-section (2) of Section 11 is significant as it states that 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 Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule

against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date. On the other hand, Section 13(1) states that the medical qualifications granted by Medical Institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of the said Act. These are medical qualifications such as LMP (Licenced Medical Practitioners) in various States of India and erstwhile provinces of India. The Third Schedule is in respect of courses in medicine which were recognised prior to the enforcement of the IMC Act, 1956, while the courses conducted by the institutions mentioned in the First Schedule have recognition under the said Act.

17.5. Sections 11 and 13 have a bearing on Section 15 of the Act. Section 15 states that, subject to the other provisions contained in the Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register. Further, except as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register shall, *inter alia,* practice medicine in any State or shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner. The expression “State Medical

Register" as per Section 2(k) means a register maintained under any law for the time being in force in any State, regulating the registration of practitioners of medicine. The word 'medicine' is defined in Section 2(f) of the said Act to mean modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. Therefore, unless a person has sufficient qualification recognised under the Schedules to the Act, he or she cannot be enrolled on any State Medical Register. In the absence of any such enrolment, such a person is barred from practicing medicine in any State.

17.6. Further, all persons who are enrolled in any State Medical Register and who possess any of the recognised medical qualifications are enabled to be enrolled after registration as medical practitioners under the Indian Medical Register. As per sub-Section (2) of Section 21, it is the duty of the Registrar of the Indian Medical Council, to keep the Indian Medical Register in accordance with the provisions of the IMC Act, 1956, and to from time to time revise the register and publish it in the Gazette of India and in such other manner as may be prescribed. In fact, under Section 22 of the Act, each State Medical Council has to supply to the Indian Medical Council, six printed copies of the State Medical Register on the first day of April of each year. On the receipt of report of the registration of a person in a State Medical Register or

on application made in the prescribed manner by such person, enter his name in the Indian Medical Register *vide* Section 23 of the Act. Removal of the names from the Indian Medical Register is dealt with in Section 24, while provisional registration is dealt with in Section 25 of the Act and registration of additional qualifications in Section 26 of the Act. Every person whose name is for the first time being borne in the Indian Medical Register shall be entitled, according to his qualifications, to practice as a medical practitioner in any part of India and to recover in due course of law, in respect of such practice, any expenses, charges in respect of medicaments or other appliances, or any fees to which he may be entitled to.

18. It may be appropriate at this juncture to dilate on the Assam Act, 2004.

Assam Rural Health Regulatory Authority Act, 2004 (Assam Act):

The relevant provisions of the said Act are as extracted as under:

> "**2. Definitions.-** In this Act unless the context otherwise requires:
>
> (a) 'Act' means the Assam Rural Health Regulatory Authority Act, 2004;
>
> (b) 'Authority' means the Assam Rural Health Regulatory Authority established under Section 3;

(c) 'Certificate' means a certificate issued by the Authority under Section 17;

(d) 'Course' means the prescribed course of education and training for the Diploma in Medicine and Rural Health Care;

(e) 'Diploma in Medicine and Rural Health Care' means the diploma awarded by the Authority on successful completion of the course of Diploma in Medicine and Rural Health Care under the provisions of the Act;

x x x

(g) 'Medicine' means allopathic medicine but does not include veterinary medicine;

(h) 'Medicine and Rural Health Care' means practice of allopathic medicine and health care system in rural areas in the State of Assam;

(i) 'Medical institute' means institute established under this Act for imparting medical education both theoretical and practical for the course of Diploma in Medicine and Rural Health Care;

x x x

(l) 'Rural areas' means areas not included in a Municipal Corporation, a Municipal Board or a Town Committee or any other area notified as urban area;

x x x

(n) 'Rural Health Practitioners' means a holder of the diploma in Medicine and Rural Health Care who has registered himself as such with the Authority and obtained a certificate and a registration number.

(o) 'State Register of Rural Health Practitioners' means the register maintained under Section 17 and the expressions "Registered' and 'Registration' shall be construed accordingly;

x x x

7. Minimum Standard. - The Authority may prescribe the minimum standards of the course, the curriculum, the examination etc. in respect of the course and prescribe by regulation the terms conditions and norms to be fulfilled, facilities to be provided by a Medical Institute for imparting education and training for the course of Diploma in Medicine and Rural Health Care.

8. Permission to open a Medical Institute.- (1) Notwithstanding anything contained in this Act or any other law for the time being in force no person or organization other than the State Government of Assam shall establish a Medical Institute without (a) the recommendation of the Authority and (b) prior and expressed permission of the State Government.

(2) Every person or organization or trust wanting to start a Medical Institute shall for the purpose of obtaining permission under sub-section (1) submit to the State Government a proposal in accordance with the provisions of the Act and the rules framed thereunder and the State Government shall refer the proposal to the Authority for its scrutiny and recommendations.

(3) On receipt of the proposal, the Authority may obtain such other particulars and information as may be considered necessary from the person or the organization concerned and thereafter if may, if the proposal is defective and does not contain any necessary particular, give a reasonable opportunity to the person or organization concerned for making a written representation and it shall be open to such person or organization to rectify the defects, if any, specified by the Authority.

(4) The State Government may after considering the proposal and the recommendations or observations of the Authority and after obtaining where necessary, such other particulars as may be considered necessary by it from the person or the organization concerned either approve (with such conditions, if any, as may be considered necessary) or disapprove the proposal.

(5) The authority while making its recommendations and the State Government while passing an order, either approving or disapproving the proposal shall have due regard to the following factors, namely, -

(a) whether the proposed person or organization seeking to open a Medical Institute would be in a position to offer the minimum standards of education as prescribed by the Authority;

(b) whether the person seeking to establish a Medical Institute 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 institute;

(d) whether adequate hospital facilities having regard ·to the number of students likely to attend the Medical Institute would be available;

(e) whether adequate qualified teaching and non-teaching staff would be available in the Medical Institute.,

(f) any other condition as may be prescribed.

x x x

17. State Register of Rural Health Practitioners.- (1) The Authority shall cause to be maintained in the prescribed manner and form a Register of Diploma Holders in Medicine and Rural Health Care to be known as the State Register of Rural health Practitioners.

(2) It shall be the duty of Secretary to keep and maintain the State Register of Rural Health Practitioners in accordance with the provisions of this Act and the rules made thereunder.

(3) The State Register of Rural Health practitioners shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872.

(4) Every person on successful completion of the course shall be eligible for enrollment in the State Register of Rural Health Practitioners on furnishing to the Secretary the proof of such qualification and on payment of such fees as may be prescribed.

(5) Every person whose name has been enrolled in the State Register of Rural Health Practitioners shall be entitle to have a certificate issued by the Authority under the hand and seal of the President and the Secretary and bearing a Registration Number and shall be eligible to practise medicine and Rural Health Care in rural areas of the State of Assam.

x x x

24. Powers and Functions.- The Rural Health Practitioners shall be eligible to practise Medicine and Rural Health Care subject to the following conditions namely.

(a) they shall treat only those diseases and carry out those procedures which shall be outlined in the rules;

(b) they shall prescribe only those drugs, which shall be outlined in rules;

(c) they shall not carry out any surgical procedure, invasion, investigation or treatment, 'Medical Termination or; Pregnancy etc. but shall confine themselves to such medicinal treatment and perform such minor surgery as may be prescribed.

(d) they shall practice only in rural areas as defined in the Act;

(e) they may issue illness certificates and death certificates.

(f) they shall maintain name, address, age, sex, diagnosis and treatment records of all patients treated by them; and

(g) they shall not be eligible for employment in Hospitals, Nursing Homes and Health

establishments located in urban areas as General Duty Physicians involved in patient care in OPD, Emergency and Indoor Services.

18.1. The Assam Act is an Act to provide for the establishment of a regulatory authority in the State of Assam to regulate and register the Diploma holders in Medicine & Rural Health Care (DMRHC) and their practice of medicine in rural areas and also to regulate opening of Medical Institutes for imparting education and training for the course of Diploma in Medicine and Rural Health Care (DMRHC).

18.2. Section 3 of the said Act deals with the establishment of the Assam Rural Health Regulatory Authority (in short "the Authority"). The powers and functions of the authority are enumerated in Section 6, *inter alia,* to include;

(a) to hold, conduct and regulate the examination for the course that is Diploma in Medicine and Rural Health Care including entrance test for admission into the Medical Institute;

(b) to maintain State Register of Rural Health Practitioners;

(c) to lay down the norms and standards for the course, curriculum facilities for instruction, training assessments and examinations for students undergoing the course for Diploma in Medicine and Rural Health Care and of the Medical Institute;

(d) to provide guidelines for admission of the students to the course.

(e) to inspect physical facilities, staff position, Hospital and academic infrastructure of a Medical Institute imparting education and training for Diploma in Medicine and Rural Health Care at the time of starting of such an Institute and to give no objection certificate after the said Institute has completed all formalities and norms and to make periodical inspection to judge compliance of shortcomings pointed out, and to maintain standard of the Institute;

18.3. Section 8 deals with opening of a medical institute. Sub section (1) of Section 8 begins with a *non-obstante* clause and states that, notwithstanding anything contained in the Assam Act or any other law for the time in force, no person or organisation other than the State Government of Assam shall establish a Medical Institute without (a) the recommendation of the Authority and (b) prior and expressed permission of the State Government. Sub-section (2) of Section 8 states that any person or organisation or trust wanting to start a Medical Institute must obtain permission from the State Government by submitting a proposal to the State Government. The State Government shall refer the proposal to the Authority for its scrutiny and recommendations. The Authority can prescribe the minimum standards of the course, the curriculum, the examination

etc. in respect of the course and prescribe the regulation, the terms and conditions and norms to be fulfilled, facilities to be provided by a medical institute for imparting education and training for the course of Diploma in Medicine and Rural Heal Care. The Authority has the power to withdraw recognition, when an Institute does not conform to the standards prescribed by the authority, by making a reference to that effect to the State Government and the State Government may, on consideration of an explanation from the concerned Medical Institute and on making further enquiry, de-recognise an Institute.

18.4. Section 17 of the Assam Act speaks of State Register of Rural Health Practitioners. That the Authority shall cause to be maintained in the prescribed manner and form a register of Diploma Holders in Medicine and Rural Health Care to be known as the State Register of Rural Health Practitioners. Every person on successful completion of the course that is, the course of education and training for the Diploma in Medicine and Rural Healthcare, shall be eligible for enrolment in the State Register of Rural Health Practitioners on furnishing the proof of such qualification and on payment of such fees as may be prescribed. Every person whose name has been enrolled in the State Register of Rural Health Practitioners shall be entitled to have a certificate to be issued by the Authority bearing a Registration Number and

shall be eligible to practise Medicine and Rural Health Care in rural areas. The Rural Health Practitioners cannot use the word “Doctor” or “Dr.” before and after their names. However, they can identify themselves as Rural Health Practitioners or RHP.

18.5. Section 21 of the Assam Act states that no person whose name is not enrolled or has been cancelled or removed from the State Register of Rural Health Practitioner shall practise Medicine and Rural Health Care at any place whether urban or rural in the State of Assam. The powers and functions of Rural Health Practitioners are delineated in Section 24 which clearly states that they can practice subject to the following conditions namely:

(a) to treat only those diseases and carry out only those procedures which are outlined in the rules;
(b) to prescribe only those drugs, which are outlined in the rules;
(c) not to carry out any surgical procedure, invasion, investigation or treatment, Medical Termination of Pregnancy etc. but confine themselves to such medicinal treatment and perform such minor surgery as may be prescribed.
(d) to practise only in rural areas as defined in the Assam Act;
(e) to issue only illness certificates and death certificates;
(f) they shall maintain name, address, age, sex, diagnosis and treatment records of all patients treated by them;

(g) not to be employed in Hospitals, Nursing Homes and Health establishments located in urban areas as General Duty Physicians involved in patient care in OPD, Emergency and Indoor Services.

18.6. Section 22 of the Assam Act empowers the State Government to make rules, while Regulations could be made by the Authority with the previous approval of the State Government, as per Section 23 of the Act.

18.7. The Regulations of Assam Rural Health Regulatory Authority, 2005, regarding admission into Diploma in Medical and Rural Health Care course in Medical Institutes of the State were framed under which minimum standards for Medical Institutes offering Diploma in Medicine and Rural Health Care were prescribed under which the subjects to be taught were as under:

> "3. SUBJECTS TO BE TAUGHT:
> (a) Anatomy
> (b) Physiology & Biochemistry
> (c) Community Medicine
> (d) Pathology & Microbiology
> (e) Pharmacology
> (f) Medicine and Paediatrics
> (g) Surgery and Orthopaedics
> (h) Obstetrics and Gynaecology
> (i) Eye & ENT
> (j) Basics of Radiology and Imaging
> (k) Basics of Forensic and State Medicine
> (l) Basics of Human Genetics
> (m) Basics of Dentistry."

18.8. Regulation 3 of the 2005 Regulations prescribes the curriculum for the course of Diploma in Medicine and Rural Health Care in the subjects referred to above. Annexure I to the regulations deals with the lists of diseases that can be treated by a Diploma holder in Medicine and Rural Health Care including the procedures that can be carried out, whereas, Annexure II lists the drugs that can be prescribed by such a diploma holder. The same read as under:

> "ANNEXURE-1
>
> DISEASES THAT CAN BE TREATED BY A DIPLOMATE OF MEDICINE AND RURAL HEALTH CARE
>
> Acute bacterial infections febrile illnesses, diarrhoea, dysentery, viral infections, malaria, amoebiasis, giardiasis, worm infestations, gastroenteritis, cholera, typhoid fever, vitamin deficiencies, iron deficiency anaemia, malnutrition, upper respiratory infections, actuate bronchitis, bronchial asthma, hypertension, heart failure, in ischemic heart disease, peptic ulcer, acute gastritis, viral hepatitis, urinary tract infection, common skin infections, scabies, leprosy, first aid in poisoning and trauma, snake bite and animal bite. In children fever, respiratory infections, diarrhoeal diseases, nutritional deficiencies, anaemia, jaundice, convulsion, measles, chicken pox, asthma, scabies and other common skin infections. Care in pregnancy, child birth and post-natal period, family welfare activities.
>
> PROCEDURES THAT CAN BE CARRIED OUT BY A DIPLOMATE IN MEDICINE AND RURAL HEALTH CARE: -

Venupuncture, venesection, application of bandages and dressings, nasogastric intubation, catheterization, peritoneal tap, normal delivery.

OPERATIVE PROCEDURES PERMITTED TO BE CARRIED OUT BY A DIPLOMATE IN MEDICINE AND RURAL HEALTH CARE

Repair of small wounds by stitching, drainage of abscess; burn dressing, application of splints in fracture cases, application of tourniquet in case of severe bleeding wound in a limb injury.

Conduction of delivery, episiotomy, stitching of vaginal tear during labour.

ANNEXURE-II

DRUGS THAT CAN BE PRESCRIBED BY DIPLOMATE IN MEDINE AND RURAL HEALTH CARE: -

Antacids, H2 receptor blockers, proton pump inhibitors, sucralfate.
Antihistaminic.
Antibiotics-cotrimoxazole, trimethoprim, norfloxacin, quinolones, tetracycline, chloramphenicol, streptomycin gentamycin, penicillin, cephalosporin, erythromycin, nitrofurantoin, metronidazole, tinidazole;
Antitubercular-INH, rifampicin, ethambutol, pyrazinamide, streptomycin,
Anthelminthics-mebendazole, albendazole, piperazine.
Antimalerials-chioroquine, quinine, primaquine, sulfadoxine-pyrimethamide.
Antileprosy-dapsone, rifampicin, clofazimine.
Topical antifungal.
Antiviral-acyclovir. Antiamoebic-metronidazole, tinidazole, doloxanide furoate, chloroquine.
Antiscabies-benzyle-benzoate, gamma benzene hexachloride, Anticholinergic-atropine.
Antiemetics

Antipyretics and analgesics
Laxatives
Oral rehydration solutions.
Haematinics and vitamins.
Diuretics and antihypertensives
Nitroglycerine
Sedatives and antiepilectics-phenobarbitone, diazepam, phenytoin. Bronchodilators-salbutamol, theophyiline, aminophylline, corticosteroids.
Expectorants
Uterine stimulants and relaxants, oral contraceptic pills."

19. ***A comparative table and analysis of the provisions of the IMC Act, 1956 and the Assam Act is as under:***

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
Object of the Act	"An Act 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**."	"An Act to provide for the establishment of a **regulatory authority in the State of Assam** to **regulate and register the diploma holders in Medicine & Rural Health Care (DMRHC)** and **their practice of medicine in rural areas** and also to **regulate opening of Medical Institutes** for imparting education and training for the course of diploma in Medicine & Rural Health Care (DMRHC)"

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
Apex Authority	**Indian Medical Council**	**Assam Rural Health Regulatory Authority**
Definition of 'medicine'	"**2 (f). 'Medicine'** means modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery."	"**2 (g). 'Medicine'** means allopathic medicine but does not include veterinary medicine."
Definition of 'medical institution'	"**2 (e). 'Medical Institution'** means any institution, within or without India, which grants degrees, diplomas or licences in medicine."	"**2 (i). 'Medical Institution'** means institution established under this Act for imparting medical education both theoretical and practical for the course of Diploma in Medicine and Rural Health Care."
Scope of Recognised medical qualification/ course(s) covered under the respective Acts	"**2 (h) 'recognised medical qualification'** means any of the medical qualifications included in the Schedules."	"**2 (d). 'Course'** means the prescribed course of education and training for the diploma in Medicine & Rural Health Care" **2 (e). 'Diploma in Medicine & Rural Health Care'** means the diploma awarded by the Authority on successful completion of the course of diploma in Medicine & Rural Health Care

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
		under the provisions of the Act."
Power to prescribe minimum standards	"**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 provide for— (a)–(i) xxx (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**	**"7. Minimum Standard-** **The Authority may prescribe the minimum standards of the course, the curriculum, the examination etc**. in respect of the course and prescribe by regulation the terms, conditions and norms to be fulfilled, facilities to be provided by a Medical Institute for imparting education and training for the course of Diploma in Medicine and Rural health Care."

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
	examinations, qualifications of examiners and the conditions of admission to such examinations; (m) the **standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners**."	
Permission for establishment of a new medical institute/college	**"10A. Permission for establishment of new medical college, new course of study-** (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	"**8. Permission to open a Medical Institute- (1) Notwithstanding anything contained in this Act or any other law for the time being in force** no person or organisation other than the State Government of Assam shall **establish a Medical Institute** without (a) the recommendation of the Authority and (b) **prior and expressed permission of the State Government.**

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
	(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."**	
Inclusion of name in the respective registers, and eligibility to practice upon such inclusion	"**21. The Indian Medical Register—**(1) **The Council shall cause to be maintained in the prescribed manner a register of medical practitioners to be known as the Indian Medical Register, which shall contain the names of all persons who are for the time being enrolled on any State Medical Register and who possess any of the recognised medical qualifications.** (2) **It shall be the duty of the Registrar of the Council to keep the Indian Medical Register in accordance with the provisions of this Act and of any orders made by the Council**, and from time to	**"17. State Register of Rural Health Practitioners-** (1) **The Authority shall cause to be maintained in the prescribed manner and form a register of Diploma Holders in Medicine and Rural health Care to be known as the state Register of Rural Health Practitioners.** (2) **It shall be the duty of the Secretary to keep and maintain the State Register of Rural Health Practitioners in accordance with the provisions of this Act and the rules made thereunder**.

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
	time to revise the register and publish it in the Gazette of India and in such other manner as may be prescribed. (3) Such register shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872 (1 of 1872), and may be proved by a copy published, in the Gazette of India. **"27. Privileges of persons who are enrolled on the Indian Medical Register.—**Subject to the conditions and restrictions laid down in this Act regarding medical practice by persons possessing certain recognised medical qualifications, **every person whose name is for the time being borne on the Indian Medical Register shall be entitled according to his qualifications to practise as a medical practitioner in any part of India** and to recover in due course of law in respect of such practice any expenses, charges in	(3) The State Register of Rural Health Practitioners shall be deemed to be a public document within the meaning of the Indian Evidence Act, 1872. (4) Every person on successful completion of the course shall be eligible for enrolment in the State Register of Rural Health Practitioners on furnishing to the Secretary the proof of such qualification and on payment of such fees as may be prescribed. (5) **Every person whose name has been enrolled in the State Register of Rural Health Practitioners shall be entitle to have a certificate issued by the Authority under the hand and seal of the President and the Secretary and bearing a Registration Number and shall be eligible**

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
	respect of medicaments or other appliances, or any fees to which he may be entitled."	**to practise medicine and Rural Health Care in rural areas of the State of Assam:** (6) Provided that no Rural Health Practitioner shall use the word "Doctor" or "Dr." before and after his name. However, he may identify himself as Rural Health Practitioner or RHP."
Rights, powers and functions of persons possessing the qualifications prescribed under the respective Acts	"**15. Right of persons possessing qualifications in the Schedules to be enrolled.—** [1] Subject to, the other provisions contained in this Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register. (2) Save as provided in section 25, no person other than a medical practitioner enrolled on a State Medical Register, — (a) shall hold office as physician or surgeon or any other office (by whatever designation called) in	**"24. Powers and Functions-** The **Rural Health Practitioners shall be eligible to practise Medicine and Rural Health Care** subject to the following conditions, namely- (a) they shall treat only those diseases and carry out those procedures which shall be outlined in the rules; (b) they shall prescribe only those drugs,

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
	Government or in any institution maintained by a local or other authority. (b) **shall practice medicine in any State**; **(c) shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner.** (d) shall be entitled to give evidence at any inquest or in any Court of Law as an expert under section 45 of the Evidence Act, 1872 (1 of 1872) or on any matter relating to medicine.'	which shall be outlined in rules; (c) they shall not carry out any surgical procedure, invasion, investigation or treatment, Medical Termination or Pregnancy etc., but shall confine themselves to such medicinal treatment and perform such minor surgery as may be prescribed. (d) they shall practise only in rural areas as defined in the Act; (e) **they may issue illness certificates and death certificates**. (f) they shall maintain name, address, age, sex, diagnosis and treatment records

Parameters	***Indian Medical Council Act, 1956***	***Assam Rural Health Regulatory Authority Act, 2004***
		of all patients treated by them; and (g) they shall not be eligible for employment in Hospitals, Nursing Homes and Health establishments located in urban areas as General Duty Physicians involved in patient care in OPD, Emergency and Indoor Services.

A comparative study between MBBS, DMRHC is made as under:

Parameters	***MBBS***	***DMRHC***
1. Nomenclature	Bachelor of Medicine and Bachelor of Surgery.	Diploma in Medicine and Rural Health Care.
2. Establishment	Under the Indian Medical Council Act, 1956. Affiliated to a recognised University.	Under the Assam Rural Health Regulatory Authority Act, 2004. Affiliated to Srimanta Sankaradeva University of Health Sciences
3. Status of the course	Medical - Degree.	Medical - Diploma.

Parameters	***MBBS***	***DMRHC***
4. Duration of the course	Four & Half years + One year Internship	Three & Half years (Six months Internship)
5.Eligibility Criteria	10+2 Science with minimum 60%	10+2 Science with minimum 60%
6. Syllabus	Anatomy	Anatomy
	Physiology	Physiology
	Biochemistry	Biochemistry
	Microbiology	Microbiology
	Pathology	Pathology
	Pharmacology	Pharmacology
	Community Medicine	Community Medicine
	Medicine	Medicine
	Obstetrics & Gynecology	Obstetrics & Gynecology
	Ophthalmology	Ophthalmology
	Orthopedics	Orthopedics
	ENT	ENT
	Pediatrics	Pediatrics
	Psychiatry	Psychiatry
	Surgery	Surgery
	Dermatology & Venereology	Dermatology as a part of Medicine
	Forensic Medicine & Toxicology	

Parameters	***MBBS***	***DMRHC***
	Anesthesiology	
	Internship	Internship
7. Registration	Every student who successfully completes the course shall be eligible for enrollment in the State Medical Register as per the IMC Act, 1956.	Every student who successfully completes the course shall be eligible for enrollment in the State Register of Rural Health Practitioners as per Assam Act.
8. Designation	After the registration the graduates are posted in different level of Health sectors and designated as a Medical Officers (MO) at PHC, CHC etc.	After the registration the graduates are posted in different Sub-Centers, PHC at rural area and designated as a Rural Health Practitioners' (RHP).
9. Powers and Functions	1. They can practice medicine and provide primary health care. 2. They can perform minor surgery at PHC, CHC level. 3. They will provide normal delivery at PHC, CHC and Higher Level. 4. They can issue illness certificates and death certificates.	1. They shall be eligible to practice medicine and Rural Health Care in rural areas only in the State of Assam. 2. They can perform minor surgery at PHC or sub-center clinic. 3. They will provide normal delivery at Sub Centre and PHC Level. 4. They can issue illness certificates and death certificates.

20. The following aspects of the matter emerge when the provisions of the Assam Act are considered in juxtaposition with the corresponding provisions of the Central Act:

i) The Central Act operates in the area of modern scientific medicine, in all its branches, *vide* Section 2(f). The Assam Act seeks to regulate the practice of allopathic medicine, in rural areas, *vide* Section 2(g). Essentially, modern scientific medicine, includes allopathy. In other words, modern scientific medicine is the genus and allopathic medicine is a species of modern scientific medicine. This view has been adopted by this Court in ***A.K. Sabhapathy*** and ***Dr. Mukhtiar Chand***. Therefore, the practice in modern scientific medicine including allopathic medicine, is governed by the Central Act. Hence, in order to be recognised as a practitioner in any branch of modern scientific medicine, including allopathic medicine, the qualifications that must mandatorily be obtained are those listed in the Schedules to the Central Act.

ii) Further, Section 17 of the Assam Act provides that persons holding a Diploma in Medicine and Rural Health Care after successful completion of the course instituted under the Act, would be registered as Rural Health Practitioners and would be eligible to practise 'medicine' and Health Care in rural areas of Assam. The Assam Act permits Diploma holders to practise

'medicine', i.e., allopathic medicine, in rural areas of Assam. We are unable to accept that allopathic medicine, which is governed by the Central Act, may be practised by persons who do not possess the qualifications contemplated under the Schedules to the Central Act.

iii) Practise in modern scientific medicine, including allopathic medicine, must be permitted only after having successfully undergone the academic rigor, as prescribed under the Central Act. The Central Act, in Section 33 authorizes the Council to prescribe *inter alia*, the courses and period of study, practical training to be undertaken, subjects, examination and standards of proficiency required to be achieved. Therefore, it is problematic to hold that without having successfully gone through meticulous training as contemplated under the Central Act, a person may practise medicine.

iv) On a close reading of Section 15 of the Central Act, in conjunction with Section 24 of the Assam Act, we find that Rural Health Practitioners possessing a Diploma under the Assam Act have been authorised to perform certain functions identical to those performed by medical practitioners who possess qualifications prescribed under the Central Act. Such functions include treatment of common illnesses, prescription of certain categories of drugs, performance of minor surgeries,

issuance of illness and death certificates. Performance of such functions by persons who do not possess the qualifications prescribed under the Central Act, could, in our view, have dangerous consequences.

It is to be noted that insofar as Entry 25 of List III is concerned, there are dual restrictions which would operate on the legislative competence of a State Legislature to enact any law under the said Entry: first is, if such a law is to be made by the State Legislature, it is always subject to Entries 63, 64, 65 and 66 of List I or the Union List, in respect of which only the Parliament has the power to enact a law. The second restriction is with regard to the subject of the Entry as a whole. If the Parliament has made any law which is outside the scope of Entries 63, 64, 65 and 66 of List I but within the scope of Entry 25 of List III, in such a case Article 254 and the principles of repugnancy would apply if a State Law is in conflict with such Parliamentary Law.

In the instant case the law made by the State Legislature, namely, the Assam Act is hit by the first of the aforesaid two restrictions; hence, it is null and void as the Assam Legislature lacked the legislative competence to enact such a Law.

In light of the aforesaid discussion, we are of the considered view that Rural Health Practitioners enlisted under the Assam Act,

are underqualified to perform functions similar to those performed by medical practitioners registered in accordance with the Central Act. In order to be recognised as a practitioner in any branch of modern scientific medicine, including allopathic medicine, the qualifications that must mandatorily be obtained are those listed in the Schedules to the Central Act.

Triology of Cases

21. We next consider the three decisions relied upon by learned senior counsel for the appellants.

(A) ***Dr. Mukhtiar Chand vs. State of Punjab, (1998) 7 SCC 579***, ***("Dr. Mukhtiar Chand")***:

(i) In this case the controversy was with regard to the issuance of declarations by the State of Punjab under clause (iii) of Rule 2(ee) of the Drugs and Cosmetics Rules, 1945 (for short, 'Drugs Rules') which defines "registered medical practitioner". The State of Punjab issued a notification dated 29.10.1967 declaring all the *vaids/hakims* who had been registered under the East Punjab Ayurvedic and Unani Practitioners Act, 1949, and the PEPSU Ayurvedic and Unani Practitioners Act, 2008, and the Punjab Ayurvedic and Unani Practitioners Act,

1963, as persons practising modern system of medicine for the purposes of the Drugs Act.

(ii) Before this Court, it was contended that the right of practitioners of Indian medicine to practice modern scientific system of medicine (allopathic medicine) is protected under Section 17(3)(b) of the Indian Medicine Central Council Act, 1970 ('IMCC Act, 1970' for short).

(iii) While dealing with the IMC Act, 1956, this Court observed that in order to ensure professional standards required to practice allopathic medicine, the IMC Act, 1956 was passed, and the said Act also deals with the reconstitution of the Medical Council of India and maintenance of an Indian Medical Register. Section 2(f) of the IMC Act, 1956, defines "medicine" to mean "modern scientific medicine" in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery and the expression "recognised medical qualification" is defined in Section 2(h) of the said Act to mean any of the medical qualifications included in the Schedules to the Act. Further, referring to Section 15 of the IMC Act, 1956, it was observed that qualifications included in the Schedules shall be sufficient qualification for enrolment in any State Medical Register; but in none of the Schedules,

the qualifications of integrated courses figure. Consequently, by virtue of this section, persons holding degrees in integrated courses cannot be registered in any State Medical Register. Hence, by Act 24 of 1964, Section 15 of the IMC Act, 1956, was modified by adding two more sub-sections. Section 15(2)(b) thereof prohibits all persons from practicing modern scientific medicine in all its branches in any State except a medical practitioner enrolled in a State Medical Register. There are two types of registration as far as the State Medical Register is concerned: the first is under Section 25 and the second is under Section 15(1) of the said Act. The third category of registration is in the "Indian Medical register" which the Indian Medical Council is enjoined to maintain under Section 21 of the said Act for which recognised medical qualification is a prerequisite.

(iv) The privileges of persons who are enrolled in the Indian Medical Register are mentioned in Section 27 of the IMC Act, 1956, and include the right to practice as a medical practitioner in any part of India. On the other hand, State Medical Registers are maintained by the State Medical Council of respective States which are not constituted under the IMC Act, 1956, but are constituted under any

law for the time being in force, in any State regulating the registration of practitioners of medicine. It is, thus, possible that in any State, the law relating to registration of practitioners of modern scientific medicine may enable a person to be enrolled on the basis of the qualifications other than the "recognised medical qualification" which is a prerequisite, only for being enrolled in the Indian Medical Register and not for the purposes of registration in a State Medical Register. A person holding "recognised medical qualification" cannot be denied registration in any State Medical Register, but a person registered in a State Medical Register cannot be enrolled in the Indian Medical Register unless he possesses "recognised medical qualification". This follows from a combined reading of Sections 15(1), 21(1) and 23 of the IMC Act, 1956. So, by virtue of such qualifications as prescribed in a State Act and on being registered in a State Medical Register, a person will be entitled to practice allopathic medicine under Section 15(2)(b) of the IMC Act, 1956.

(v) In this context, it would be relevant to mention what are the recognised medical qualifications in the context of the First and Third Schedules to the IMC Act, 1956. While the First Schedule deals with recognised medical

qualifications secured by persons from recognised Universities in India, on the other hand, the Third Schedule deals with medical qualification attained under the Pre-Independence recognised medical enactments such as Bombay Medical Act, 1912, the Bihar and Orissa Medical Act, 1916, the Punjab Medical Registration Act, 1916, etc.

(vi) It was further observed in the said Judgment that Rule 2(ee) of the Drugs Rules was inserted with effect from 14.05.1960, while Section 15 of the IMC Act, 1956, as it then stood, only provided that the medical qualifications in the Schedules shall be sufficient qualification for enrolment in any State Medical Register. Therefore, there was no inconsistency between the Section and the Rule when it was brought into force. However, after sub-section (2) of Section 15 was inserted into the said Act, a medical practitioner enrolled in a "State Medical Register" could practice modern scientific medicine in any State but the rights of non-allopathic doctors to prescribe drugs by virtue of the declaration issued under the said Drugs Rules, by implication, got obliterated. However, this Court observed that it did not debar them from prescribing or

administering allopathic drugs sold across the counter for common ailments.

(vii) On a harmonious reading of Section 15 of the IMC Act, 1956 and Section 17 of the IMCC Act, 1970, it was observed that there is no scope for a person enrolled in the State Register of Indian Medicine or the Central Register of Indian Medicine to practice modern scientific medicine in any of its branches unless that person is also enrolled in a State Medical Register within the meaning of the IMC Act, 1956. Right to practice modern scientific medicine or Indian system of medicine cannot be based on the provisions of the Drugs Rules and declaration made thereunder by State Governments.

(viii) In the above context, it was held that Rule 2(ee)(iii) as effected from 14.05.1960 was valid and did not suffer from the vice of want of legislative competence and the notifications issued by the State Governments thereunder were not *ultra vires* the said Rule and were legal. That after sub-section (2) in Section 15 of the IMC Act, 1956, occupied the field *vide* Central Act 24 of 1964 with effect from 16.06.1964, the benefit of the said Rule and the notifications issued thereunder would be available only in those States where the privilege of such right to practice

any system of medicine is conferred by the State law under which practitioners of Indian medicine are registered in the State, which is for the time being in force. That the position with regard to medical practitioners of Indian medicine holding degrees in **integrated courses** is on the same plane inasmuch as if any State Act recognises their qualification as sufficient for registration in the State Medical Register, the prohibition contained in Section 15(2)(b) of the IMC Act, 1956 will not apply. Thus, as far as modern medicine or allopathic medicine is concerned, the provisions of Section 15 of the IMC Act, 1956, would again become relevant inasmuch as Section 15(1) of the IMC Act, 1956, would have to be fulfilled before a person can be enrolled in any State Medical Register insofar as modern scientific medicine is concerned. If such a person does not fulfil the requirement of sub-section (1) of Section 15, then he would not have a recognised medical qualification in modern scientific medicine, in which event he cannot be registered in the said Medical Register under the IMC Act, 1956. Even insofar as those medical practitioners holding degrees in integrated courses are concerned, the State has to recognise their qualifications as sufficient for registration in the State Medical Register,

otherwise, the prohibition under Section 15(2)(b) would apply, *qua* practice of modern scientific medicine. In such an event, they would not be empowered to prescribe allopathic drugs covered by the Indian Drugs and Cosmetics Act, 1940 (Drugs Act) and they can only prescribe allopathic drugs sold across the counter for common ailments.

(B) ***Subhasis Bakshi vs. W.B. Medical Council, (2003) 9 SCC 269, ("Subhasis Bakshi")***:

(i) In this case the appellants therein, who had completed the diploma course of Community Medical Service from duly recognised institutions in the State of West Bengal and were posted in different parts of the State, had assailed the Notification dated 15.10.1980, issued by the Government of West Bengal by which amendments were made to the statute of the State Medical Faculty by introducing Article 6-F under Part B. Thereafter, a Corrigendum was issued and the diploma course that was earlier known as "Diploma in Medicine for Community Physicians" was rechristened as "Diploma in Community Medical Service".

The grievance of the appellants therein was that although they could treat certain common diseases but

they had no right to issue certificates of sickness or death, prescriptions etc. as the same was taken away by a Notification dated 21-11-1990. Subsequently, challenging the denial of "consequential right to treat" such as the right to issue prescription or certificates of sickness or death, the second-round of litigation began. A Writ Petition was filed before the Calcutta High Court which was allowed in favour of the appellants, subject to the condition that they would not be allowed to pursue private practice and it was made clear that their only right was to prescribe medicines and issue certificates and this part of the order became final.

However, the Bengal Medical Council preferred an appeal before the Division Bench of the Calcutta High Court. Relying on ***Dr. A.K. Sabhapathy vs. State of Kerala and others, AIR 1992 SC 1310, ("Dr. A.K. Sabhapathy")*** wherein it was found that "a person can practise in allopathic system of medicine in a State or in the country only if he possesses a recognised medical qualification" and since the appellants therein did not possess the required qualification, it was held that their names could not be included in the Medical Register. On this basis, the appellants approached this Court.

This Court considered the question as to whether the right to issue prescription or certificates could be treated as a part of right to treat. This Court observed that once the right to treat is recognised, then the right to prescribe medicine or issue necessary certificate flows from it, or else the right to treat cannot be completely protected. It was further observed that appellants therein had the right to prescribe medicine. Consequently, the order of the Division Bench was set aside and the order of the learned Single Judge was restored.

A direction was issued to include the names of all the diploma-holders concerned in the State Medical Register for the limited purpose indicated therein.

(C) ***Dr. A.K.Sabhapathy vs. State of Kerala, AIR 1992 SC 1310, ("Dr. A.K.Sabhapathy")***:

(i) In this case, the validity of the first *proviso* to Section 38 of the Travancore Cochin Medical Practitioners' Act, 1953 (for short, "the State Act") and the order dated 20.09.1978 and a notification dated 13.04.1981 issued by the Government of Kerala, were assailed. This Court considered the aforesaid State Law in light of the IMC Act, 1956 ("the Central Act") and observed that the expression

'modern scientific medicine' in Section 2(f) of the Central Act refers to the Allopathic system of medicine and that the provisions of the Central Act have been made in relation to medical practitioners practising the said system. This view found support from the fact that after the enactment of the Central Act, the Parliament had enacted the IMCC Act, 1970 in relation to the system of Indian medicine commonly known as Ayurveda, Siddha and Unani and the Homoeopathy Central Council Act, 1973 in relation to Homoeopathic system of medicine wherein provisions similar to those contained in the Central Act had been made in relation to the said systems of medicine. This Court was of the view that from the provisions of the State Act, noticed earlier, it was evident that the field of operation of the State Act covered all the systems of medicine, namely, Allopathic, Ayurvedic, Siddha, Unani and Homoeopathic systems of medicine. Moreover, the State Act dealt with recognition of qualifications required for registration of a person as a medical practitioner in these systems, conditions for registration of medical practitioners and maintenance of register of practitioners for each system and the

constitution of separate councils for modern medicine, homoeopathic medicine and indigenous medicine.

It was observed that as compared to the State Act, the field of operation of the Central Act is restricted and it is confined in its application to modern scientific medicine, namely, the Allopathic system of medicine only, wherein it also deals with recognition of medical qualifications which may entitle a person to be registered as a medical practitioner; constitution of the Medical Council of India to advise the Central Government in the matter of recognition or withdrawal of recognition of medical qualifications, to prescribe the minimum standards of medical education required for granting recognised medical qualifications by Universities or Medical Institutions in India and to appoint inspectors and visitors for inspection of any medical institution, college or hospital. It also provides for maintaining the Indian Medical Register and for enrolment of a person possessing recognised medical qualification in the said register and for removal of a person from the said register. That the Central Act does not deal with the registration of medical practitioners in the States and it proceeds on the basis that the said registration and the maintenance of State

Medical Register is to be governed by the law made by the State. This Court was of the view that, it cannot, therefore, be said that the Central Act lays down an exhaustive code in respect of the subject matter dealt with by the State Act. It can, however, be said that the Central Act and the State Act, to a limited extent occupy the same field, viz., recognition of medical qualifications which are required for a person to be registered as a medical practitioner in the allopathic system of medicine. Both the enactments make provision for recognition of such qualifications granted by the universities or medical institutions.

In this context, sub-section (1) of Section 15 of the Central Act, i.e. IMC Act, 1956 as well as sub-section (1) of Section 21 of the said Act were referred to and it was observed that the aforesaid provisions contemplated that a person can practise in Allopathic system of medicine in a State or in the country only if he possesses a recognised medical qualification. Permitting a person who does not possess the recognised medical qualification in the Allopathic system of medicine would be in direct conflict with the provisions of the Central Act. That the first *proviso* to Section 38 of the State Act in so far as it empowers the State Government to permit a person to practise Allopathic

system of medicine even though he does not possess the recognised medical qualifications for that system of medicine, is inconsistent with the provisions of Sections 15 and 21 read with Sections 11 and 14 of the IMC Act, 1956 i.e., the Central Act. That the said *proviso* suffered from the vice of repugnancy in so far as it covered persons who wanted to practice the Allopathic system of medicine and that the same was void to the extent of such repugnancy. That practitioners in the Allopathic system of medicine must, therefore, be excluded from the scope of the first *proviso* and it must be confined in its application to systems of medicines other than the Allopathic system of medicine.

Consequently, this Court allowed the appeal in part.

On a close consideration of the case law discussed above, it is evident that the following broad areas, would be covered within the legislative field of *"Coordination and determination of standards"* under Entry 66 of List I:

i) Prescription of medium of instruction, *vide* ***Gujarat University, Ahmedabad vs. Shri Krishna Ranganath Mudhoklar***;

ii) Recognition/de-recognition of an Institution imparting medical education by laying down standards for medical education *vide* ***State of Tamil Nadu vs. Adhiyaman Educational and Research Institute***; ***Modern Dental College and Research Centre vs. State of Madhya Pradesh***; ***Chintpurni Medical College and Hospital vs. State of Punjab***.

iii) Calibre of teaching staff, syllabus to be taught, student-teacher ratio, ratio between the students and the hospital beds available to each student, laboratory facilities, standard of examination, *vide* ***Preeti Srivastava vs. State of Madhya Pradesh***.

The Assam Act, which is enacted by the State Legislature on the strength of Entry 25 of List III, not only seeks to introduce a new course in the field of medical education, but also seeks to regulate the profession of the candidates successfully completing the said course. The Assam Act vests with the Regulatory Authority constituted thereunder, the power to prescribe the minimum standards of the course, duration of the course in allopathic medicine the curriculum, the examination etc. Further, it authorises the State Government to grant permission for the opening of a medical institute. Prescription of minimum standards for medical education, authority to recognise or de-recognise an institution etc., are areas over which exclusive legislative

competence lies with the Parliament, under Entry 66 of List I. The State Legislatures, on the other hand, under Entry 25 of List III, possess legislative competence to legislate with respect to all other aspects of education, except the determination of minimum standards and co-ordination. With a view to provide a benchmark quality of medical education, it is essential that uniform standards be laid down by the Parliament, which are to be adhered to by institutions and medical colleges across the country. To this end, Entry 66 of List I has been formulated with the objective of maintaining uniform standards of education in fields of research, higher education and technical education. Hence, State Legislatures lack legislative competence in the areas of prescription of minimum standards for medical education, authority to recognise or de-recognise an institution, etc. The Assam Act which seeks to regulate such aspects of medical education is therefore liable to be set aside on the ground that the State Legislature lacks competence to legislate with regard to the aspects enumerated hereinabove.

22. Another aspect of the matter that remains to be considered is with regard to the *vires* of the Assam Community Professional (Registration and Competency) Act, 2015 (hereinafter referred to as 'Assam Act of 2015' for the sake of convenience), which was enacted

by the State of Assam with a view to remove the basis of the impugned judgment and in an attempt to restore the position of the diploma holders in medicine and to give them continuity in service. The relevant provision of the said Act read as under:

> "An Act to provide for registration norms and competency of the Community Health, Professionals, after passing B.Sc. (Community Health) Course and to give same status to the students who have completed or have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in Medical Institute, Jorhat with that of B.Sc (Community Health) course, to enable them to serve as Paramedical personnel in the State of Assam.
>
> Whereas it is expedient to provide for registration norms and competency of the Community Health Professionals, after passing B.Sc (Community Health) course and to give same status to the students who have completed or have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in Medical Institute, Jorhat with that of B.Sc (Community Health) course, to enable them to serve as Paramedical personnel in the State of Assam and the matters connected therewith or incidental thereto;
>
> xxx
>
> 2. In this Act, unless the context otherwise requires,-
>
> (a) "Act" means the Assam Community Health Professionals'
>
> (Registration and Competency) Act, 2015;
>
> (b) "Certificate" means a Certificate of Registration issued by the Director of Medical Education, Research and Training, Assam under section 3 of this Act;

(c) "Community Health Professionals" means the persons who have been registered as such by the Director and issued a Certificate of Registration in accordance with the provisions of section 3 of this Act;

(d) "Course" means the prescribed Paramedical Course of B.Sc (Community Health) or in short B.Sc (CH) as approved by the Union Cabinet, conveyed vide Govt. of India's letter No. DO No. V 11025/40/2009/MEP-1 Dated 31/12/2013;

xxx

3. (1) Every student who successfully completes the Course from any institution permitted by the Government of Assam to run the Course, shall be registered by the Director at Directorate of Medical Education, Assam, Guwahati and shall be issued with a Certificate of Registration as Community Health Professional.

(2) The students who have already completed or have been undergoing the Diploma in Medicine and Rural Health Care (DMRHC) course in the Medical Institute, Jorhat, on the date of commencement of this Act, shall be deemed to have completed or have been undergoing as the case may be, the Paramedical Course of B.Sc (CH) for the purposes of this Act and shall acquire the same status to that of B.Sc (Community Health) graduates and they shall also be registered by the Director and issued with Certificate of Registration as Community Health Professionals:

Provided that the Certificate of Registration issued by the Director under this sub-section to the students who have already completed Diploma in Medicine and Rural Health Care (DMRHC) course from the Medical Institute, Jorhat, shall be deemed to have been issued by the Director with effect from the date of issue of their respective Diplomas from the said Institute:

Provided further that the students who have been undergoing the Diploma in Medicine and Rural Health

> Care (DMRHC) course in the Medical Institute, Jorhat on the commencement of this Act, shall be deemed to have been undergoing the Course as defined under this Act and they shall be issued Certificate of Registration under this Act by the Director on completion of their Course."

It would be useful to refer to a decision of this Court in the case of ***Indian Aluminium Company Co. vs. State of Kerala, AIR 1996 SC 1431***, wherein the principles regarding the abrogation of a judgment of a court of law by a subsequent legislation could be culled out in the following manner: --

> "56. From a resume of the above decisions the following salient principles would emerge:
>
> (1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transaction and require the court to give effect to them;
>
> (2) The Constitution has delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary;
>
> (3) In a democracy governed by rule of law, the Legislature exercises the power under Articles 245 and 246 and other companion Articles read with the entries in the respective Lists in the Seventh Schedule to make the law which includes power to amend the law.
>
> (4) The Court, therefore, need to carefully scan the law to find out: (a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such

validation is consistent with the rights guaranteed in Part III of the Constitution.

(5) The Court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the Legislature. Therefore, they are not the encroachment on judicial power.

(6) In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date.

(7) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the Legislature must have competence to do the same."

In the aforesaid case, Section 11 of the Kerala Electricity Surcharge (Levy and Collection) Act, 1989 arose for consideration and it was held that it was a valid piece of legislation and not an incursion on judicial power as the effect of Section 11 was to validate illegal collection of tax under an invalid law.

In ***Hindustan Gum and Chemicals Ltd. vs. State of Haryana, (1985) 4 SCC 124***, this Court held that it is permissible for a competent legislature to overcome the effect of a decision of a court, setting aside the imposition of a tax by passing a suitable Legislation, amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court has been rendered and by inactive and appropriate provision validating the levy and collection of tax made before the decision in question was rendered. In that decision, reliance was placed on ***Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality, AIR 1970 SC 192***, a Constitution Bench decision of this Court, which has laid down the requirements which a validating law should satisfy in order to validate the levy and collection of a tax which has been declared earlier by a court as illegal, the relevant portion of the said judgments read as under:--

> "When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A

court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

Further, in the following decisions, this Court has held that the amendments made to the respective Acts subsequent to the decision of the court were valid and therefore, were upheld:--

a) In ***State of Orissa vs. Oriental Paper Mills Ltd., AIR 1961 SC 1438***, the insertion of Section 14A by way of an amendment to Orissa Sales Tax Act subsequent to the decision of this Court in ***State of Bombay vs. United Motors India Ltd., AIR 1953 SC 252***, was upheld.

b) In ***M/s. Misrilal Jain vs. State of Orissa, AIR 1977 SC 1686***, this Court declared Orissa Taxation (on Goods Carried by Roads or Inland Waterways] Act, 1962 as invalid, since it did not cover the defect from which the Orissa Taxation (on Goods Carried by Roads or Inland Waterways] Act 7 of 1959 had suffered. It was further held that the State was not entitled to recover any tax. The subsequent Act 8 of 1968 was upheld as the vice from which the earlier enactment suffered was cured by due compliance with the legal or constitutional requirements.

c) In ***M/s. Tirath Ram Rajindra Nath, Lucknow vs. State of U.P., AIR 1973 SC 405,*** this Court held that there is a distinction between encroachment on the judicial power and

nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. In that case, the U.P. Sales Tax Act (Amendment and Validation) Act, 1970 was upheld by this Court.

d) In ***Govt. of A.P. vs. Hindustan Machine Tools Ltd., AIR 1975 SC 2037, I.N. Saksena vs. State of M.P., AIR 1976 SC 2250, Central Coal Fields Ltd., vs. Bhubaneswar Singh, AIR 1984 SC 1733*** and several other decisions this Court has upheld the amendments made to the respective Acts subsequent to the decision of a court of law thereby removing the basis of the judgment.

(e) In ***State of Himachal Pradesh vs. Narain Singh, (2009) 13 SCC 165***, this Court has held that Himachal Pradesh Land Revenue (Amendment and Valuation) Act, 1996 was sound as it removed the defect of the previous law. Hence, the amendment was not invalid just because, it nullified some provisions of the earlier Act. It was also held that the amendment was necessitated in the interest of land revenue, land settlement and for the purpose of updating the same.

The Legislature cannot directly overrule a judicial decision. But when a competent Legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the said exercise is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such legislative device which removes the vice in previous legislation which has been declared unconstitutional is not considered an encroachment on judicial power but an instance of abrogation. The power of the sovereign legislature to legislate within its field, both prospectively and retrospectively cannot be questioned. It would be permissible for the legislature to remove a defect in earlier legislation pointed out by a constitutional court in exercise of its powers by way of judicial review. This defect can be removed both retrospectively and prospectively by a legislative process and the previous actions can also be validated. But where there is a mere validation without the defect being legislatively removed, the legislative action will amount to overruling the judgment by a legislative fiat which is invalid.

In light of the aforesaid discussion, the petitions challenging the *vires* of the Assam Community Professional (Registration and Competency) Act, 2015 i.e., Transferred Case (C) Nos. 24 and 25 of 2018 are liable to be dismissed, and are accordingly dismissed. The said Act has been enacted with a view to restore the position of the

diploma holders in medicine and to give them continuity in service. The said Act has been enacted by a valid legislative exercise, and does not transgress any other constitutional limitation and in accordance with Entry 25 of List III of the Seventh Schedule and is not in conflict with the IMC Act, 1956 and the rules and regulations made thereunder as per Entry 66 of List I of the Seventh Schedule.

23. Before parting with this case, it is necessary to advert to the reasoning of the Division Bench of the High Court which has held in paragraph 15 of its judgment dated 30.10.2014 that the Central Legislation, namely, the IMC Act, 1956, fully covers the field and therefore, the impugned legislation passed by the Assam State Legislature concerning the Diploma Course in Allopathic Medicine was null and void. In this context, Article 254 of the Constitution has been adverted to and it has been observed that, on account of repugnancy and there being no Presidential assent as required under Article 254, the Assam Act is null and void.

24. We do not think the doctrine of repugnancy governing Article 254 of the Constitution of India, would apply in the instant case. Although, Entry 25 of List III of the Seventh Schedule of the Constitution of India is in the Concurrent List which gives powers to both the Union as well as the State Legislatures to pass laws on the subject of 'Education', it is significant to note that any such law

to be made by the State Legislature is ***subject to***, *inter alia,* Entry 66 of List I or the Union List of the Seventh Schedule. Hence, when there is a direct conflict between a State Law and the Union Law in the matter of coordination and determination of standards in higher education (Entry 66 of List I) such as in medical education, concerning allopathic medicine or modern medicine, as is in the instant case, where the State Law is in direct conflict with the Union law, the State Law cannot have any validity as the State Legislature does not possess legislative competence. In other words, the Assam Act and Rules and Regulations made under the said Act, being in conflict with the Indian Medical Council Act, 1956 (IMC Act, 1956) and the Rules and Regulations made thereunder, the doctrine of repugnancy as such would not apply within the meaning of Article 254 of the Constitution.

The finding with regard to the constitutionality of the Assam Act of 2015 is limited to holding it non-repugnant with the Indian Medical Council Act, 1956. However, this Court is not rendering any finding with regard to any potential conflict of the provisions of the Assam Act of 2015 with the National Medical Commission Act, 2019.

We also wish to refer to the Directive Principle of State Policy. The framers of the Constitution, in Article 47 have directed the Union and State Governments to regard the 'improvement of public

health', as its primary duty. It follows from this directive that the State shall make all possible efforts to ensure equitable access to healthcare services. These efforts must be made to progressively realize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as acknowledged in international conventions and agreements. While the State has every right to devise policies for public health and medical education, with due regard to peculiar social and financial considerations, these policies ought not to cause unfair disadvantage to any class of citizens. The citizens residing in rural areas have an equal right to access healthcare services, by duly qualified staff. Policies for enhancing access to rural healthcare must not shortchange the citizens residing in rural areas or subject them to direct or indirect forms of unfair discrimination on the basis of their place of birth or residence.

Any variation between the standards of qualification required for medical practitioners who render services in rural areas qua the medical practitioners rendering services in urban or metropolitan areas must prescribe to constitutional values of substantive equality and non-discrimination. We may hasten to add that deciding the particular qualifications for medical practitioners practising in disparate areas and in disparate fields, providing different levels of primary, secondary or tertiary medical services, is

within the mandate of expert and statutory authorities entrusted with the said mandate by the Parliament.

The above ought to be considered in the spirit of constitutional goals and statesmanship subserving, as it does, the common good of the citizenry of our Country.

Conclusion:

25. In the result, we arrive at the following conclusions:

(i) Entry 25 of List III of the Seventh Schedule of the Constitution of India deals with the subject education which is in the Concurrent List under which both the Parliament or the Union Legislature as well as the State Legislatures have legislative competence to legislate. However, Entry 25 of List III is subject to, *inter alia,* Entry 66 of List I which is the Union List. Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Thus, when any law is made under Entry 25 of List III by a State Legislature, the same is always subject to Entry 66 of List I. In other words, if any law made by the Parliament comes within the scope of

Entry 66 of List I, then the State Legislation would have to yield to the Parliamentary law.

Thus, where one Entry is made "subject to" another Entry, it would imply that, out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specifically dealt with by the appropriate legislature.

(ii) In the instant case, it is held that the IMC Act, 1956 is a legislation made by the Parliament for the purpose of coordination and determination of standards in medical education throughout the Country. The said law, along with the Rules and Regulations made thereunder are for the purpose of determination of standards of medical education throughout India. Thus, determination of standards in medical education in India is as per the IMC Act, 1956 which is a Central Law. This is in respect of modern medicine or allopathic medicine within the scope of Entry 66 of List I and not under Entry 25 of List III of the Seventh Schedule. Therefore, a State Legislature which passes a law in respect of allopathic medicine or modern medicine would be subject to the provisions of the IMC

Act, 1956 and the Rules and Regulations made thereunder. This would imply that no State Legislature has the legislative competence to pass any law which would be contradictory to or would be in direct conflict with the IMC Act, 1956 and the Rules and Regulations made thereunder. In other words, the standard in medical education insofar as modern medicine or allopathy is concerned, having been set by the IMC Act, 1956 and the Rules and Regulations made thereunder or by any subsequent Act in that regard, such as the Medical Council of India Act, 2019, the State Legislature has no legislative competence to enact a law which is in conflict with the law setting the standards of medical education in the context of modern medicine or allopathic medicine, which has been determined by Parliamentary Legislation as well as the Rules. In other words, a State Legislature has no legislative competence to enact a law in respect of modern medicine or allopathic medicine contrary to the said standards that have been determined by the Central Law.

In view of the above conclusion, we hold that decision of the Gauhati High Court holding that the Assam Act to be null and void, is just and proper.

However, the Gauhati High Court has held that the State had no legislative competence to enact the Assam Act in view of Article 254 of the Constitution on the premise that the IMC Act and the Rules and Regulations made thereunder were holding the field and hence, on the basis of the doctrine of occupied field, the Assam Act was struck down as being repugnant to the Central Law. In view of the aforesaid conclusion, we are of the view that the said reasoning is incorrect. It is reiterated that the IMC Act and the Rules and Regulations made thereunder, which are all Central legislations, have been enacted having regard to Entry 66 of List I and would prevail over any State Law made by virtue of Entry 25 of List III of the Constitution.

(iii) Hence, in view of the Indian Medical Council Act, 1956 and the Rules and Regulations made thereunder, the Assam Act, namely, the Assam Rural Health Regulatory Authority Act, 2004, is declared to be null

and void, in view of the Assam Legislature not having the legislative competence to enact the said Law.

(iv) Consequently, the subsequent legislation, namely, the Assam Act of 2015 i.e., the Assam Community Professionals (Registration and Competency) Act, 2015, enacted pursuant to the judgment of the Gauhati High Court, is a valid piece of Legislation as it has removed the basis of the impugned judgment passed by the Gauhati High Court. The 2015 Act is also not in conflict with the IMC, Act, 1956. This is because the Central Act namely, IMC, Act, 1956 does not deal with Community Health Professionals who would practise as allopathic practitioners in the manner as they were permitted to practise under the Assam Act, in rural areas of the State of Assam. Hence, by a separate legislation the Community Health Professionals have been permitted to practise as such professionals. The said legislation of 2015 is not in conflict with IMC, Act, 1956 and the rules and regulations made thereunder. Hence, the Act of 2015 is not hit by Entry 66 of List I of the Constitution and is within the legislative competence of the State

Legislature under the Seventh Schedule of the Constitution.

26. In the result, the Civil Appeals arising out of SLP(C) Nos. 32592-32593 of 2015 as well as TC (C) No. 24 of 2018 and TC (C) No. 25 of 2018 stand dismissed. Pending application(s), if any, shall stand disposed of.

27. Parties to bear their respective costs.

.....J.
(B.R. GAVAI)

.....J.
(B.V. NAGARATHNA)

NEW DELHI;
24 JANUARY, 2023.