SACHIN SHANKAR MAGADUMSSMJ	20/07/2021
	SSMJ: W.P.No.10079/2021 20.07.2021 C/W WP Nos.7435/2021, 10297/2021, 10374/2021, 10379/2021, 10381/2021 & 10751/2021. ORDER In these batch of writ petitions, the petitioners have questioned the impugned notification issued by the State as per Annexure-A and the corrigendum to the said notification as per Annexure-A1. The notification under challenge seeks to mandate compulsory service to the Government by all candidates who have graduated from MBBS colleges in the year 2021 and this compulsory service is made applicable to those students who have secured admissions through Government quota. The challenge is on the ground that the Karnataka Compulsory Service Training by Candidates Completed Medical Courses Act, 2012 (for short 'the 2012 Act') is void and the same is sought to be struck down on the ground that the 2012 Act is repugnant to the National Medical Commission Act, 2019 (for short 'the NMC Act'). 2. Shri K.G.Raghavan, learned Senior Counsel would vehemently argue and contend that the 2012 Act is a State legislation whereas the NMC Act is a legislation Act passed by the Indian Legislature and therefore, under Article 254(1), any provision of law made by the

Legislature of a State is repugnant to the provision of law made by the Parliament to which Parliament is competent to enact. Learned Senior Counsel would submit to this Court that the 2012 Act which contemplates registration of candidates on the State Register is conditional upon completion of compulsory rural service but the NMC Act specifically lays down that any person who qualifies the National Exit Test as contemplated under Section 15 of the said Act is entitled for a license to practice medicine and therefore, has a choice to get enrolled either on the National Register or the State Register. Learned Senior Counsel to demonstrate that the 2012 Act which is repealed by the NMC Act even otherwise is repugnant and therefore, has to be declared as void. He would contend that the students who have registered on the State Register cannot practice medicine unless he/she completes compulsory rural service under the 2012 Act but, the same person under the NMC Act is entitled to receive a license and get registered either on the State Register or the National Register and is also entitled to practice medicine the moment he/she qualifies the National Exit Test under Section 15 of the NMC Act. On these set of arguable points, he would submit to this Court that there is direct conflict between the State and Union legislations and therefore, the 2012 Act must be held to be repugnant to the NMC Act.

3. Learned Senior Counsel would further submit to this Court that the NMC Act repeals the Indian Medical Council Act, 1956 (for short 'the IMC Act') and creates overarching scheme to regulate medical education and medical profession and

therefore, to ascertain whether there is a repugnancy, he would submit to this Court that the test of two legislations containing contradictory provisions is the only criterion of repugnance. To buttress his arguments, he has placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust vs. State of Tamil Nadu and Others .

4. Learned Senior Counsel in furtherance of his contention would submit to this Court that the Medical Council of India Act governs the field of medical education in this country and therefore, he would submit to this Court that though legislation can be made by the State Legislature relating to medical education subject to the legislation made by the Parliament. He would place reliance on the judgment rendered by the Hon'ble Apex Court in the case of Association of Medical Superspeciality Aspirants and Residents and Others vs. Union of India and Others and also judgment rendered by Co-ordinate Bench of this Court in the case of Bushra Abdul Aleem vs. Government of Karnataka .

5. Learned Senior Counsel has also countered the arguments canvassed by the learned counsel appearing for the National Medical Commission who has placed reliance on the dictum laid down by the Hon'ble Apex Court in the case of Modern Dental College & Research Centre vs. State of M.P. Countering the arguments of the contesting respondents, learned Senior Counsel would contend that even in the

case of Modern Dental College (supra), the Hon'ble Apex Court has held that it is not possible to exclude the entire gamut of admissions from List III Entry 25.

6. Learned Senior Counsel would apprise this Court to demonstrate in regard to the inconsistency between two legislations under the 2012 Act and the NMC Act. By taking this Court to Section 3(4) of the 2012 Act and then comparing it with Section 33(1) of the NMC Act, learned Senior Counsel would submit to this Court that under the NMC Act a person has a right to practice medicine immediately upon qualifying the National Exit Test under Sections 15 and 33 of the NMC Act. But, however, under the IMC Act read with 2012 Act, a person, though even after completing medical course, is not entitled to get registered on the rolls and cannot practice medicine until he/she compulsorily serves the Government. In this background, he would submit to this Court that there is obvious inconsistency between the 2012 Act and therefore, it is repugnant to the NMC Act.

7. Learned Senior Counsel would stress and lay emphasis on the fact that the judgment rendered by the Co-ordinate Bench of this Court in Bushra Abdul Aleem (supra) and the judgment rendered by the Hon'ble Apex Court in Association of Medical Superspeciality Aspirants (supra) would not come to the aid in determining whether 2012 Act is repugnant to the NMC Act. To elaborate, he would submit to this

Court that those judgments were decided in the context of the IMC Act which now stands repealed by the NMC Act. Therefore, he would submit to this Court that there is a vast difference in the scheme of registration of medical practitioners. He would also take this Court to the relevant provisions of IMC Act and NMC Act to demonstrate that even if IMC Act did not occupy the field but, however, with the introduction of NMC Act, the 2012 Act is repugnant to the provisions of the NMC Act and therefore, the judgments cited supra have no application post commencement of NMC Act.

8. By referring to Section 21(1) of the IMC Act, learned Senior Counsel would submit to this Court that the authority is required to maintain a register of medical practitioners who possess any of the recognized medical qualifications. Whereas under Section 33(1) of the NMC Act, it is not the medical qualifications but only after the students gets through the National Exit Test held under Section 15 of the NMC Act would be entitled for license to practice medicine and therefore, is entitled to get his name registered either in the National Register or State Register as the case may be. Therefore, in view of Section 33(1) of the NMC Act, the impugned notification which contemplates compulsory rural service has to be declared as void and has to be struck down on the ground that the 2012 Act is repugnant to the NMC Act.

9. Learned Senior Counsel would further submit to this Court that there is a sea change in the scheme of registration under

the NMC Act. He would submit to this Court that the previous regime under the IMC Act required a person to first be registered on the State Register in order to be registered under the Indian Medical Register. However, under the NMC Act, a person need not necessarily be enrolled on the rolls of the State Register in order to be enrolled on the National Register and therefore, he contends that post NMC Act, a person need not satisfy the conditions laid down by the State Government in order to secure registration and obtain a license to practice medicine.

10. Learned Senior Counsel would sum up and would submit to this Court that pending consideration of repugnancy of 2012 Act, the petitioners are entitled for interim relief at the hands of this Court. He would also submit to this Court that the petitioners have made out a prima facie case and if interim order is not granted, serious prejudice would be caused to the petitioners.

11. Sri. Thiruvengadum, learned counsel arguing for the petitioners in W.P.10079/21 would adopt the arguments of the learned Senior Counsel Sri. K.G. Raghavan insofar as repugnancy of 2012 Act. Learned counsel taking this Court to the judgment rendered in Bushra's case, Swamy Majnunath's case and also Association case would submit to this Court that the judgment rendered in the aforesaid cases cannot be a binding precedent. To buttress his contentions, he would contend that the NMC Act came into force w.e.f. 25.9.2020 and therefore there is paradigm shift in the

position of law regarding medical education, registration and practice. Therefore, he would contend that the 2012 Act has become non est in view of NMC Act coming into place and consequently repealing the IMC Act. the Learned counsel would argue on the same lines as that of the learned Senior counsel and further contend that the preamble of the NMC Act is entirely different from the IMC Act. He would submit that new Act i.e., NMC Act emphasis on service of medical profession and community health. Therefore NMC Act has gained more powers in terms of conducting nation wide examinations.

12. Learned counsel would further contend that 2006 Rules including Amended Rule 11 is perse illegal as it is beyond the scope of Section 14(1) of the 1984 Capitation Fee Act. Learned counsel would further submit that the Amended Rule 11 as well as the original Rule 11 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006 (for short '2006 Rules') is bad as it contemplates to impose penalty on the student/parent of the student and the same runs contrary to the Section 14 of the parent Act which empowers Rule making so as to regulate Educational Institutions charging exorbitant capitation fee and to provide adequate seats for students of Karnataka. He would profusely argue and contend that the Act does not regulate the conduct of any candidate or the parents of the candidate. Therefore, the Rule does not have any legs to stand. In this background, he would place reliance on the judgment of the Apex Court in the Bombay Dyeing and Manufacturing Co. Ltd .vs. Bombay Environmental Action Group .

Placing reliance on the said judgment, he would submit that a subordinate legislation apart from being intra vires of the Constitution should not also be ultra vires of the parent Act under which it has been made.

13. Learned counsel Sri. Akash.V.T. arguing for the petitioners in W.P. 10381/2021 would submit that the amended Rule 11 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institution Rules, 2006 as amended by 1st respondent vide notification dated 17.7.2012 and the same cannot be imposed for the simple reason that the amended Rule is not published in the Official Gazettee and therefore, the Rule 11 cannot be implemented. To buttress his arguments, he has placed reliance on the judgments of the Apex Court in the case of Union of India .vs. Param Industries Limited . The learned counsel would further submit that unless notification is duly published in the official gazette, Rule 11 cannot be enforced. He would further submit that even assuming for the sake of arguments that Rule 2006 are applicable and the petitioners are bound by original Rule 11, however, the amended Rule 11 cannot be imposed on the petitioners since the amended notification clearly indicates that it shall be operational on the date of publication in the gazette. The second limb of arguments canvassed by the learned counsel is that even if it is assumed that Rule 11 is applicable, the 2nd respondent has not followed the due process of law of 2006 Rules and none of the hospitals allotted by the 2nd respondent comes under the rural areas and therefore the entire scheme under the impugned

notification runs contrary to the purpose and object of Rule 11 of 2006 Rules. He has also raised several objections in regard to district wise vacancy announced for service was 1667 posts as against the number of students supposed to undergo service was 3185 and highlighting this ratio he would submit that it is highly disproportionate and arbitrary. He would also take this Court to the endorsement issued by the District Health officer of Mysuru and placing reliance on the said endorsement he would submit that the students are posted where there is no vacancy. The competency of 2nd respondent who has prepared the merit list of the students is also questioned. The learned counsel further would take serious objection to the merit list prepared by the Authority by only taking note of final year Marks of MBBS course and therefore submits that this has ultimately resulted in discrimination although the students have fared well in their previous examinations. Learned counsel also submit that the direction issued by the Co-ordinate Bench is not considered and High Power Committee is not constituted. On these set of grounds, the learned counsel would submit that the petitioners are entitled for the interim relief in the present case on hand.

14. Sri.Girish Kumar, appearing on behalf of petitioners in W.P.No.10374/2021 apart from adopting the arguments of Sri.Akash.V.T. has raised additional objections that the merit list is prepared by a person who is not competent and therefore, contends that the merit list prepared by 2nd respondent vitiates the entire process. Therefore, he would submit

to this Court that this is a fit case which would warrant interference by this Court and therefore, the interim order needs to be granted.

15. Learned counsel Sri. N. Khetty, appearing for respondent No.4/National Medical Council has however taken strong objection against the petitioner for not having placed on record the interim order passed by the Co-Ordinate Bench of this Court in W.P.7435/2021. He would submit that considerable length of time is being wasted though an interim order identical to one granted in W.P.7435/2021 can be granted in these petitions also. However, learned counsel would further submit that since the 2nd respondent has issued corrigendum dated 17.6.2021 to the impugned notice dated 8.6.2021 at Annexure-A, the impugned notice stand substituted by Rule 11 of 2006 Rules. Taking this Court to the interim order granted in W.P.7435/2021, learned counsel would argue and contend that in the connected identical case, Co-ordinate Bench has elaborately dealt with bonds under the 2006 Rules and therefore, the petitioners in the present batch of writ petitions are not entitled to any relief. Therefore, no further relief as an interim measure can be granted even in respect of corrigendum at Annexure-A1, which is a step taken by the State under the 2006 Rules.

16. Learned counsel would further contend that the main ground of attack by the petitioners that the 2006 Rules are repugnant to the NMC Act, which has

brought about a sea change pursuant to its replacing by the IMC Act is misconceived. He would counter the arguments canvassed by the petitioners and contend that the NMC Act has brought about changes in the realm of academia and the medical profession. The application and operation of the NMC Act is prospective. To buttress Section 16 of the NMC Act which relates to students taking up National Exit Test for which there is a three year window provided under the Act. It is for the Central Government to notify it and the same is yet to be done. He would further contend that the NMC Act are clearly embodied in detail by the Constitution Bench of the Apex Court in the case of Modern Dental College and Research Center and others .vs. State of M.P. (supra). Learned counsel by taking this Court to para 107 to 113 of the said judgment would submit to this Court that neither there is a sea change nor there is any scope for repugnancy.

17. Learned counsel appearing for 4th respondent placing reliance on Bushra Abdul Aleem (supra) would submit that repugnancy of State enactment on compulsory service was urged vis-a-vis IMC Act and the said contentions were negatived by the learned Judge. Therefore, he would submit that substantive provisions of the Act was tested in Bushra's case(supra) as far as the KCS Act 2021 relating to compulsory service is concerned vis-a-vis the IMC Act. He would submit that though the learned counsel appearing for the petitioners have made a feeble attempt to make out a case that the NMC Act has brought in a sea change, but however, no materials are placed on record to prima facie demonstrate that 2006 Rules are

repugnant to MCI Act, more particularly when Apex Court has held that the present legislative space permits the State to exist in the realm of compulsory service. The learned counsel would further emphasis and apprise this Court that the present NMC Act does not contemplate any law relating to compulsory service by exercising powers under Entry 66 of List I. It is further stated that even under the IMC Act, the MCI and Central Government did not frame a uniform law relating to compulsory service and probably in this background, the Apex Court in the case of Association of Medical Superspeciality Aspirants (supra) was pleased to issue a direction to frame laws relating to compulsory service. The Apex Court while issuing such a direction was pleased to uphold the previously obtained Bonds in all the States including Karnataka. In this background, he would submit that there is absolutely no change, let alone a sea change, was brought in by bringing the NMC Act with regard to compulsory service. Therefore, it is within the domain of State to frame law relating to compulsory service under Entry 25 and Entry 26 of List III and therefore, there is no repugnancy.

18. Sri.Thiruvengadam, learned counsel for the petitioner in W.P.No.10079/2021 repelling the submissions made by the counsel appearing for respondent No.4 would submit that insofar as interim relief granted by the Co-Ordinate Bench in W.P.7435/2021 is entirely on a different footing and therefore he would submit that the prayer sought in W.P.10079/2021 or WP.No.10297/2021 are not identical and on the contrary they are entirely different. Learned counsel by way of reply while adverting to the bonds would contend that

the bond contains a clear reference to Rule 11 and therefore, it is not enforceable. His contention is that had the bond not contained any reference to Rule 11 it may have been a binding contract, as there is a specific reference to the said Rule and since the very Rule itself is under challenge, such a defence by the State is untenable.

19. Further by way of reply, the learned counsel would also take this Court to statutory powers and contend that Section 24(Transitory Provisions) of Professional Educational Institutions Act would come into play only when 2006 Rules are valid. A contention is also taken that even otherwise the aforesaid Act is meant for regulation of educational qualification of joining such professional courses and does not relate to service and the learned counsel would place reliance on Section 8 of the aforesaid Act in support of his contention.

20. Lastly, the learned counsel would submit that the balance of convenience is in favour of the petitioners who have been preparing hard for their post-graduate examination and a statement is also made that petitioners are not averse to doing rural service but however, petitioners are only requesting this Court that they may be permitted to opt for it only after the completion of the post-graduate programme. Reliance is also placed on paragraph 35 of Swamy Manjunaths' case (supra) which provides for suspension of rural service to enable higher studies.

21. The learned Additional Advocate General Shri R. Subramanyam, would take this Court through the statement of objections filed by the State to the notification dated 8.6.2021 as per Annexure-A and submits that the State has issued a corrigendum dated 17.6.2021 wherein the State has rectified the provisions of law indicating that the Notification at Annexure-A has been issued under Rule 11 of 2006 Rules instead of 2012 Act. He would vehemently argue and contend that the 2012 Act is not at all applicable to the present petitioners and it is 2006 Rules which would bind the petitioners since they have executed Bonds under Section 11 of 2006 Rules. Though the petitioners have questioned Rule 11 of 2006 Rules as void and ultra vires, the said Rule has been issued under the Karnataka Educational Institutions (Prohibition of Capitation Fee)Act, 1984 in short called as Capitation Fee Act, 1984. By placing reliance on Section 14 of the said Act, the learned AAG would submit that the State is empowered to make Rules by Notification for carrying out the purposes of this Act. He would submit that Rule 11 of 2006 Rules provide for execution of Bonds by candidates selecting medical seats under Government quota in Government and private colleges. The present petitioners having accepted the seats under the Government quota are bound to offer themselves for rural service for a minimum period of one year. Therefore, he would submit that Rule 11 confirms with the statute which provides for Regulation of Admission to Educational Institutions. He would also submit that Section 4 of the Capitation Fee Act provides for Regulation of Admissions to Educational institutions and therefore Rule 11 of 2006 Rules fall

within the scope of the Statute while imposing a condition for the purpose of admission to Government seats. Rule 11 is in conformity with the statute and does not exceeds the limits of the Authority conferred by the enabling Act.

22. Learned AAG by placing reliance on the decision of the Co-ordinate Bench in W.P.Nos.40566/2015 and connected matters submits that the validity of the 2012 Act has been upheld and the petitioners who have completed PG course were directed to undergo Rural service for having voluntarily executed the Bonds. The present petitioners who have completed medicine have voluntarily executed the bond that they will provide service in Rural areas of Karnataka and now they cannot turn around and challenge the same. The AAG has placed reliance on the judgment rendered by this Court in the case of Swamy Manjunatha (supra) and the judgment rendered by the Apex Court in the case of Association of Medical Super Speciality Aspirants (supra) and submit that execution of Bond is upheld by the Apex Court and therefore, at this juncture, if the notification as per Annexure-A and A1 are stayed the respondent-State and the citizens at large would be prejudiced.

23. Heard the learned Senior Counsel and also learned counsel appearing for the petitioners, learned counsel appearing for the respondent No.4 and learned Additional Advocate General.

24. Before I advert to the various points raised by the learned counsel appearing for the petitioners, it would be necessary for this Court to take judicial note of the judgment rendered by the Co-ordinate Bench of this Court in the case of Bushra Abdul Aleem (supra) and the judgment rendered by the Hon'ble Apex Court in Association of Medical Superspeciality Aspirants (supra). These two judgments are to be taken note of in the context of legal points raised by the learned Senior Counsel and also learned counsel appearing for the petitioners in batch of petitions that the new regime under the NMC Act entitles a right to person to practice medicine by registering himself/herself on the National Register irrespective of being registered on a State Register. In this background, legal point is raised that a person who completes the course of medicine need not satisfy the conditions laid down by the State Government in order to secure registration and obtain license to practice medicine. The petitioners contend that the impugned notification at Annexure-A and consequent Corrigendum indicating rectification at Annexure-A1 are inconsistent with the NMC Act.

25. A legal argument is also advanced by the petitioners that the principles laid down by the Co-ordinate Bench in Bushra Abdul Aleem (supra) and the principles laid down by the Hon'ble Apex Court in Association of Medical Superspeciality Aspirants (supra) were decided in the context of IMC Act which is now repealed and replaced by the NMC Act and therefore 2012 Act is liable to be struck down as repugnant to the NMC Act. Now the question that has to be prima facie examined by this Court while

considering the interim order sought by the petitioners is to whether the material placed on record would prima facie demonstrate that there is a sea change in the scheme of registration under the NMC Act and therefore, the principles laid down by the Co-ordinate Bench of this Court in Bushra Abdul Aleem (supra) and the principles laid down by the Hon'ble Apex Court in Association of Medical Superspeciality Aspirants (supra) have no application to the present case on hand.

26. Now let me examine as to whether NMC Act has brought changes in the realm academia and the medical profession. It would be useful for this Court to extract Section 15 of the NMC Act, which reads as follows:

15. (1). A common final year undergraduate medical examination, to be known as the National Exit Test shall be held for granting licence to practice medicine as medical practitioners and for enrolment in the Sate Register or the National Register, as the case may be.

(2). The Commission shall conduct the National Exit Test through such designated authority and in such manner as may be specified by regulations.

(3). The National Exit Test shall become operational on such date, within three years from the date of commencement of the Act, as may be appointed by the Central Government, by notification.

(4). Any person with a foreign medical qualification shall have to qualify National Exit Test for the purpose of obtaining licence to practice medicine as medical practitioner and for enrolment in the State Register or the National Register, as the case may be, in such manner as may be specified by regulations.

(5). The National Exit test shall be the basis for admission to the postgraduate broad-specialty medical education in medical institutions which are governed under the provisions of this Act or under any other law for the time being in force and shall be done in such manner as may be specified by regulations.

(6). The Commission shall specify the regulations the manner of conducting common counseling by the designated authority for admission to the postgraduate broad-specialty seats in the medical institutions referred to in sub-section (5);

Provided that the designated authority of the Central Government shall conduct the common counseling for All India seats and the designated authority of the State Government shall conduct the common counseling for the seats at the State level.

27. Section 15 of the NMC Act clearly

indicates that the Act itself provides three years window upon the Central Government to notify. The object of introducing NMC Act can be traced from the judgment rendered by the Constitution Bench of the Hon'ble Apex Court in the case of Modern Dental College & Research Centre (supra). Therefore, if the IMC Act is compared with the new regime under the NMC Act, this Court would prima facie find that there is no sea change under the Act as contended by the learned Senior Counsel and other learned counsel appearing for the petitioners.

28. Though the theory of repugnancy is set up by the learned counsel appearing for the petitioners, this Court would prima facie find that there is no much difference between the IMC Act with the present new NMC Act. The IMC Act did not contemplate compulsory service though the previous regime had power which can be traced under the Entry 66 of List-I. Similarly under the new Act, the power to regulate compulsory service also vests under the NMC Act. But, however, the Legislature has not embarked upon bringing in the component of compulsory service within the ambit of NMC Act as of now. Therefore, what this Court would find, at this stage, is that the 2006 Rules which regulates compulsory service for having offered medical seats in Government Colleges under subsidized fee is not inconsistent or in conflict with the provisions of the NMC Act. If there is no sea change in the earlier IMC Act and the one under the new NMC Act, then it would be useful for this Court to examine the dictum laid down by the Co-ordinate Bench of this Court in Bushra Abdul Aleem (supra).

29. The Co-ordinate Bench of this Court in the case of Bushra Abdul Aleem (supra) has extensively dealt with the constitutional validity of 2012 Act and the Karnataka Compulsory Service Training by Candidates Completed Medical Course Rules, 2015 (for short '2015 Rules') which requires every MBBS graduate after completion of internship course, every post-graduate (Diploma or Degree) candidate and every super speciality candidate shall render a compulsory rural service of one year which is remunerative. The challenge was mainly on the grounds of legislative competence, discrimination, manifest arbitrariness, unworkability and proportionality, all falling under Article 14 of the Constitution of India and question as to whether compulsory service would also infringe the fundamental right to profession guaranteed under Article 19(1)(g) of the Constitution of India.

30. The Co-ordinate Bench of this Court having exhaustively addressed the rival contentions raised therein has upheld the validity of the Karnataka Compulsory Service Training by Candidates Completed Medical Courses Act, 2012 as amended by the Karnataka Act No.35 of 2017. While upholding the validity of 2012 Act, the Co-ordinate Bench has exhaustively dealt with and examined the challenge to the 2012 Act in the context of right to profession under Article 19(1)(g), right to privacy, forced labour and also fundamental rights of minorities. This Court has also exhaustively dealt with penalty clause under the 2012 Act in the background of Rule of proportionality, manifest

arbitrariness. The Co-ordinate Bench in Bushra Abdul Aleem (supra) has also dealt with directive principles and has elaborately discussed the primary duty of the State Government to secure the welfare of the people and its bounden duty to provide adequate medical facilities for the people. This Court has meticulously examined the principles laid down by the Co-ordinate Bench in Bushra Abdul Aleem (supra).

31. The dictum laid down by the Hon'ble Apex Court in the case of Association of Medical Superspeciality Aspirants (supra) would have a direct bearing on the present lis. A similar contention was also raised before the Hon'ble Apex Court wherein a contention was taken that the fields of bonds is in direct conflict with the Medical Council of India Act and therefore, the Legislative competence of State was questioned. The Hon'ble Apex Court, however, negating the said contention was of the view that the field of bonds requiring compulsory employment is not covered by any Central Legislation. Therefore, the submissions made on behalf of the appellants therein that the States lacked competence to issue notification as the field is occupied was rejected. The Hon'ble Apex Court also dealt with the jurisdiction of the State to regulate rules in regard to compulsory service and consequently, also examined whether such rules was in violation of fundamental rights, contract of personal service and the same resulted in restraint of profession.

32. The Hon'ble Apex Court has categorically held that the medical

graduates who have entered into contract to serve the Government for a few years under reasonable terms cannot be described as one in restraint of trade. The Hon'ble Apex Court was also of the view that the conditions of compulsory bonds for admission to post-graduate and superspeciality courses in Government Medical Colleges are not in violation of Section 27 of the Contract Act, 1872 and therefore, the Hon'ble Apex Court held that all Doctors who have executed compulsory bonds shall be bound by the conditions contained therein.

33. Though the petitioners in these batch of petitions have tried to make out a case that the NMC Act has brought in sea change and therefore, the impugned 2006 Rules is in direct conflict with the Central Legislation under the NMC Act, however, have not been able to demonstrate the same. The Hon'ble Apex Court in the case of Association of Medical Superspeciality Aspirants (supra) had directed the Centre and the Medical Council of India to bring in uniform policy regarding compulsory service to be rendered by the Doctors who are trained in the Government Institutions. The NMC Act prima facie does not indicate that the new Act covers the law relating to compulsory service. If these elements are missing, then this Court is unable to understand as to how the new NMC Act would occupy the field of compulsory service and therefore, the State Legislature would lack competency to regulate the law relating to compulsory service and bonds executed therein by the students.

34. Pursuant to the direction issued by the Hon'ble Apex Court, the Union of India has not incorporated any law relating to compulsory service. Therefore, the contentions raised by the petitioners that there is a conflict between the provisions of impugned notification at Annexure-A, 2006 Rules and those of NMC Act is not made out by the petitioners.

35. Article 245 of Constitution is the fountain source of legislative power, which provides that subject to the provisions of the Constitution; Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state. Therefore, what can be inferred is that legislative field between the Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matter enumerated in List I of the Seventh Schedule. Subject to the said power of Parliament, the legislature of any State has power to make laws with respect to matters enumerated in List III. Subject to the above said two, the legislature of any State has power to make laws with respect to any of the matters enumerated in List II. Reference may also be made to the relevant entries of Seventh Schedule to the Constitution of India, which are quoted thus:

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

Entry 25 List III (concurrent list) - Education,

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

Entry 6 List II (State list) - Public health and sanitation; hospitals and dispensaries.

Entry 41 List II - State public services; State Public Service Commission.

36. It would be useful for this Court to cull out Article 309 of the Constitution of India:

309. Recruitment and conditions of service of persons serving the Unions of a State.- Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connections with the affairs of the Union of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act.

37. If the above said entries are examined meticulously, what can be gathered is the concept of occupied field is relevant in the case of laws made with reference to entries in List I or II of the Seventh Schedule, the doctrine of covered field has been applied only to the entries in List III. The express words employed in any entry would necessarily include incidental and ancillary matters so as to make the legislation effective, and while applying these doctrines, the scheme of the Act under scrutiny, its object and purpose, its nature and character and the pith and substance of the legislation are to be focused at. The State legislation may sometimes incidentally touch upon the subject matter in another list. Therefore, the Courts are required to examine whether the incidental encroachment by the enactment on the State list would not make it invalid.

38. It is trite law that regard must be had to the enactment as a whole, to its main objections and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded. The State legislation, in the present case on hand, would at the most defer the process of students getting their name enrolled either in the National Register or State Register as the case may be on account of compulsory service which the students are required to undergo. However, petitioners are not able to demonstrate as to how 2006 Rules would infringe the Central Legislation. This Court would also find that notification at Annexure-A and corrigendum at Annexure-A1 have neither incidentally

encroached over NMC Act or IMC Act.

39. The Co-ordinate Bench of this Court in the case of Bushra Abdul Aleem (supra) has also exhaustively dealt with legislative entries. The Co-ordinate Bench of this Court was of the view that Entry 6 List II needs to be construed as having a far more wider import. Therefore, if the said principles are taken into consideration and applied to the present case on hand, prima facie, this Court is of the view that the notification and the consequent corrigendum are also referable to Article 309 and Entry 41 List II which speak of inter alia State public services. The Co-ordinate Bench of this Court was of the view that area of legislative competence defined under Entry 41 is far more comprehensive than that covered by proviso to Article 309.

40. The petitioners have failed to make out a case that the 2006 Rules and the notification issued therein at Annexure-A and the corrigendum at Annexure-A1 are in direct conflict with the NMC Act. If the grounds urged in the writ petitions and the materials placed on record do not indicate that there is a conflict or overlapping, then the question of repugnancy would not arise.

41. The contention raised by the learned Senior Counsel that the new Act occupies the whole field and the new Act is complete and exhaustive and therefore, it would preclude the existence of any other legislations more particularly, the 2006

Rules cannot be acceded to. Though the learned counsel appearing for the petitioners would bank on Section 33(1) and contend that any person who qualifies a National Exit Test under Section 15 is entitled to practice medicine and is also entitled to enroll his name either in the National Register or State Register and therefore, the conditions imposed by the State calling upon the students to undergo compulsory service is in direct conflict to Section 15 and Section 33(1) of the NMC Act cannot be acceded to. If students have availed the benefit at the hands of the State Government by availing subsidized seat at the cost of exchequer and if they have executed bonds in terms of 2006 Rules, then they are bound by the terms of the bond and this Court would not find any conflict and State's lack of competence in ensuring that the students who have executed bonds have to undergo compulsory rural service.

42. Rule 11 of 2006 Rules mandates that a candidate has to undergo compulsory rural service and until then, he/she is not eligible to get enrolled either in the National Register or State Register. This Court is of the view that this statutory requirement under Rule 11 of 2006 Rules is in no way in conflict either with the IMC Act or the NMC Act.

43. Learned Senior Counsel and also learned counsels appearing for the petitioners in connected batch of writ petitions have tried to impress upon this Court that petitioners are intending to pursue Master degree and therefore, at this stage, if petitioners are compelled to undergo compulsory rural service, that may

result in hindrance as the petitioners may not get sufficient time to prepare for the entrance test. Shri Thiruvengadam, learned counsel also argued that this batch of fresh students may directly be inducted in COVID wards and therefore, it is not in the best interest of students who have just passed out with Undergraduate degree and therefore, the petitioners have sought for interim order against the impugned notification at Annexure-A and the corrigendum at Annexure-A1. It was also argued that there is no infrastructure and infact the petitioners are likely to be posted at urban and semi-urban areas and that would not serve and meet the object of the Act.

44. Though this Court would find some force that there is no proper infrastructure, if doctors are available, the State Government, in all probability will provide physical infrastructure and diagnostic equipment and rectify the inadequate and fragile health system. By making rural service mandatory for students, Government would prolong medical studies and put off many aspiring medicos from entering this profession cannot be acceded to at this juncture. Though the State's belated anguish about huge loss suffered annually by the economy and the public which subsidizes education, however, this Court is of the view that this was overdue. The Government Medical Colleges have imparted education at considerable public expense and the same has massively subsidized the compulsory rural service. The legislation promulgated by the State in regard to compulsory rural service is not in conflict with either the IMC Act or NMC Act. This Court is of the view that it is much

better option to change the mindset of medical students through socialisation of the medical education curriculum .

45. Currently 'Community Medicine' is a subject which is cursorily taught to medical students in their early years. Therefore, this Court is of the view that the rural service, in all probability, would sensitize them to the miserable health conditions in rural India and infuse a spirit of voluntary service within them. Therefore, compulsory rural service has to be undergone on priority basis. The medical students are also paid decent remuneration for compulsory rural service and therefore, most students should be willing to put in a year's rural service as they would acquire valuable practical experience.

46. The new holistic kind of primary care should be practiced by new MBBS students and more medical students should be interested in such a career. These changes is possible only with a thorough reorganization of medical education. To prepare medical students and other health professionals for the new holistic approach will require a considerable broadening of their scientific basis and much greater emphasis on the behavioral sciences and on human ecology.

47. We are in the midst of global pandemic and the experts are anticipating third wave. Therefore, the duty of care from a legal perspective distinguishes it from broader notion of duty of professionals and personal levels. Therefore, it is high time that the medical professionals understand the

concept of duty in their response to COVID-19. The Doctors have a duty to treat and the State is looking upon the Doctors and is expecting them to come forward and counter this pandemic. It is a high time that fair and responsible colleagueship, diverse medical specialties needs to be promoted in the prevailing circumstances. We have already seen a disaster which has threatened humanity and valuable lives are already lost. Therefore, the fresh graduates in the present context are a ray of hope for the public at large and if the State calls upon the fresh graduates to compulsorily serve for one year with substantial remuneration and if the State ensures that the Doctors and other health workers stay at their work place, the threat to the public at large would be taken care of.

48. This Court has heard the counsels appearing for the medical students at length. This is not a time where these young doctors spend their valuable time in litigating and questioning the vires. This Court is reminded of famous saying by Shakespeare, that considerable length of time is lost in challenging the vires of a statute rather than chasing vires which has a relevancy and is aptly applicable to the present pathetic scenario. Therefore, this Court would draw the following conclusions:

(i) The impugned notification at Annexure-A calling upon the fresh doctors to undergo compulsory rural service for a period of one year and corrigendum at Annexure-A1 are product of executive action of the State under Article 162 of the Constitution of India

and the same is exercised within the scheme of the Constitution.

(ii) The legal relationship between the petitioners and the State is that latter will provide education in medicine by way of subsidized fees on the condition that qualified doctors would serve the rural areas of the State for a specific period of time. This has to be taken as a composite bargain between the State and the students and therefore, the students are bound to undergo compulsory rural service since they have voluntarily executed the Bonds.

(iii) The Apex Court in the case of Association of Medical Superspeciality Aspirants (supra) directed the Union of India and Medical Council of India to bring in uniform policy regarding compulsory service. However, the Union of India has not brought any legislation regarding compulsory rural service even under the NMC Act and therefore, this Court does not find any sea change under the NMC Act.

(iv) The subject of compulsory service does not fall within the ambit of the NMC Act and therefore, it does not take the legislative competence of the State to implement the bond system and therefore, Article 254 of the Constitution of India has no application.

(v) The Apex Court in the case of Association of Medical Superspeciality Aspirants (supra) while dealing with the

students who had executed bonds for admission to post graduate medical courses and superspeciality medical courses has upheld the legislative competence of the State Government to issue executive instructions imposing condition of service bonds and the same has been upheld by the Apex Court by holding that all doctors who have executed the compulsory bonds shall be bound by the conditions contained therein and therefore, the principles laid down by the Apex Court in the aforesaid judgment are squarely applicable to the present petitioners who have executed bonds while taking admissions for undergraduate course in medicine.

(vi) The petitioners are also unable to demonstrate that by introduction of compulsory rural service, the standards of medical education as prescribed by the Union legislation is diluted or lowered down.

(vii) The service bonds calling upon the fresh doctors to undergo one year Rural service appears to be reasonable.

49. For the reasons stated supra, this Court is of the view that this is not a fit case so as to grant any interim order.

	(SACHIN SHANKAR MAGADUM) JUDGE