

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 9139 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH** Sd/-

and

**HONOURABLE MR. JUSTICE J.B.PARDIWALA** Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

PATEL SHREYASKUMAR KAMLESHKUMAR

Versus

STATE OF GUJARAT

Appearance:

MR AJ YAGNIK(1372) for the Petitioner(s) No.

1,10,100,101,102,103,104,105,106,107,108,109,11,110,111,112,113,114,115,116,117,118,119,12,120,121,122,123,124,125,126,127,128,129,13,130,131,132,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,72,73,74,75,76,77,78,79,8,80,81,82,83,84,85,86,87,88,89,9,90,91,92,93,94,95,96,97,98,99

for the Respondent(s) No. 1,2,3,6

MR KAMAL TRIVEDI, ADVOCATE GENERAL with MR SATYAM CHHAYA

for the Respondent(s) No. 4,5

MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER for the Respondent – State.

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**  
and  
**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

**Date : 19/08/2020**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ application under Article 226 of the Constitution of India, the writ-applicants, third year MBBS students, have prayed for the following reliefs :

*“A. Be pleased to hold and declare that impugned resolution dated 17.07.2020 issued by Department of Health and Family Welfare, Government of Gujarat and following circular dated 22.07.2020 and show cause notice 23.07.2020 is arbitrary, discriminatory, irrational, de hors the power, disproportionate, unreasonable exercise of power suffers from unreasonable restriction on fundamental rights and excessive delegation of legislative power without guideline and in addition violative of Section 65 of the Disaster Management Act 2005 read with sub-clause 9 of clause 11 of Gujarat Covid Regulations 2020 notified on 13.03.2020 and be pleased to therefore declare the same to be violative of Articles 14, 19 & 21 of the Constitution of India and hence being unconstitutional be further pleased to quash and set aside the same;*

*B. Be pleased to permanently restrain the Respondent from operating, implementing and executing in any manner whatsoever, impugned resolution dated 17.07.2020 annexed at Annexure A, followed by impugned circular*

*dated 22.07.2020 annexed at Annexure B followed by show cause notice dated 23.07.2020 annexed at Annexure C;*

*C. Be pleased to restrain the Respondents from compelling Petitioner students to compulsorily perform duties and render services as 'Corona Sahayak' while holding that compelling petitioner students to become 'Corona Sahayak' is illegal, unlawful and unconstitutional and be further pleased to restrain respondents from compelling petitioner students from mandatorily rendering services as 'Corona Sahayak';*

*D. Be pleased to hold and declare that circular dated 22.07.2020 annexed at Annexure B, is de hors the power, authority and jurisdiction and that the power to not grant the term and thereby prevent the petitioner students from appearing in the 3rd year final University examination is violative of relevant provisions of Epidemic Disease Act, 1897 and the Disaster Management Act, 2005 as well as rules and regulations framed thereunder and be pleased to declare the same to be illegal and unlawful and be further pleased to quash and set aside the same;*

*E. Be pleased to grant Interim and ad interim relief in terms of paragraphs 9 (A), (B), (C) and (D);*

*F. During the pendency and till the final disposal of this Petition, be pleased to stay the operation, implementation and execution of the impugned resolution dated 17.07.2020 annexed at Annexure A, followed by impugned circular*

*dated 22.07.2020 annexed at Annexure B followed by show cause notice dated 23.07.2020 annexed at Annexure C;*

*G. Be pleased to pass an order dispensing the affidavit of the Petitioner and be further pleased to pass an order dispensing the typed copies of all annexures on account of the prevailing pandemic;*

*H. Be pleased to pass any other and further order as may be deemed fit in the interest of justice and equity.”*

2. This litigation has thoroughly disappointed this Court. We may observe that it is very unfortunate to adjudicate the writ-application of the present nature and that too at the instance of medical students. Over a period of time, this Court has been monitoring the Writ Petition (PIL) No.42 of 2020 relating to the current pandemic situation. Various orders have been passed over a period of time. The last order is dated 24<sup>th</sup> July 2020, wherein we observed as under :

**“APPEAL TO THE DOCTORS AS FRONT-LINE WARRIORS**

*After almost 2 months of lockdown, people breathed a sigh of relief as life slowly started getting back to normal. However, our doctors, nurses and other healthcare staff have not had that privilege yet. They still work unbelievably long hours in suffocating PPE kits and masks, without taking breaks, only to save lives. We have always heard about how noble the profession of medicine is and today we have witnessed it with their display of undying devotion to saving people's life. They are our backbone during this*

*pandemic. It is inspiring to see how healthcare workers are risking their lives to protect the lives of others. We must not forget that these healthcare workers are also someone's child, someone's parent and someone's spouse and someone's friend. Yet, they do not care for any of their personal roles. They are fully invested and committed in playing the role of someone who does their duty of saving lives. So far, a total of 103 doctors and 10 nurses have died in the country while fighting the COVID-19 pandemic. Just like a soldier is martyred on the battlefield, these heroes have also been martyred. This is why appreciate your doctors, thank them and show them gratitude. Tell them how important their role is and respect their hard work. In the past we have seen instances of assaults on doctors and other healthcare workers. That is unacceptable. For those who believe in God to be the life giver and life saver, our doctors are the personification of God on earth. Disrespecting them, hurting them, shunning them from the community would not just be a grave offence but also despicable sin.*

*Braver are our young MBBS students, 50 of them who have decided to volunteer and lend a helping hand in this battle against COVID-19. These students are on their way to make their profession and state proud. There are many who need help but not a lot of helping hands. The addition of these 50 pairs of hands will definitely make a change. We understand how stressful and precarious their situation is. We applaud them for their courage and dedication to saving lives.”*

3. The aforesaid observations fell from this Court with a view to motivate the students pursuing Medicine and the members of the Medical fraternity with a hope that they would come forward in these critical times and render their invaluable services to the society at large. Unfortunately, here are the writ-applicants who do not want to render their services in these critical times on one pretext or the other substantially on a lame excuse that past five months they have not been able to attend their college and within next three to four months they will have to appear in the final exam and they need time to prepare themselves for the exam. Such attitude is quite condemnable.

4. During this pandemic, volunteering within the healthcare sector has been a cornerstone of the International response. Medical students across the world have stepped up to mitigate the misery of Covid-19. Today we are dealing with a widespread public health crisis that has claimed 2,820 lives in Gujarat state alone. The pandemic has overwhelmed our healthcare sector and we are desperately falling short of doctors and nursing staff to care for the patients. Now, more than ever, the state needs its medical students to participate. It has been argued that medical students are students, not employees...they are not yet doctors. Although true, this framing fails to acknowledge that medical students have roles not only as learners, but also as clinicians-in-training. The primary role of medical students is to learn medicine. However, students are also clinicians who care for patients. As clinicians in training and close to graduating, the final year MBBS students are well equipped with the knowledge and skills to undertake ancillary roles in the hospitals during the

pandemic. They can interview patients, communicate with families, write notes, assist with procedures (such as taking nasal swabs for Covid samples), and help with care coordination and discharge planning. By taking up such secondary duties, students would drastically reduce the overall burdens on clinical teams of doctors and nurses who can focus on providing the best treatments to their patients. We believe that the contribution of students would significantly improve the patient care. It is disheartening to see that the medical students in the final year of their programme who have a vast wealth of potential to help out during the pandemic are choosing to shy away from their responsibilities. The pandemic is proof how noble and selfless the profession of medicine is. Thousands of doctors across the country are working tirelessly for hours together to save lives. They are risking their everything to fulfill their duty. Our final year MBBS students whose help we desperately seek are simply months away from becoming full fledged doctors. Although they do not have the tag and identity of a doctor, yet their training and knowledge make them competent enough to take up supporting roles to fight the pandemic. As the future health-care workforce, final year medical students are potentially a part of the health-care system's response to public health emergencies. They are the future of this nation's health infrastructure. It would be shameful if they choose to hide away from their duty that they have so rigorously and diligently trained for since the past 4 years. Evidence from past disasters and major health alerts, prove that medical students actually appeared to have thrived on assisting when needed most. During the Spanish flu pandemic of 1918-1919 that killed at least 50 million people globally, Medical students in the United States were recruited to

assist with the increasing number of patients. Medical students across the world are lending a helping hand to their governments to ease the pressure on doctors and nurses. This unprecedented time era is the perfect time to showcase your ability as a doctor to perfectly balance medical education and professional values. Medical students across the world who have volunteered and lent a helping hand during the pandemic, report a deep sense of satisfaction that comes from saving lives and helping the helpless. They also report a feeling of solidarity with the medical profession.

5. Several European governments have been seeking help from the graduating medical students to join the forces with their healthcare workers on the front lines. Italy, the European country that originally was the hardest hit until its number of cases was surpassed by Spain, has fast-tracked at least 10,000 medical students to join their future colleagues in healthcare in combating Covid-19.

6. In the United States, now the epicentre of the pandemic, the government has come up with plans to integrate medical students into the healthcare system. A large number of medical schools, such as the Harvard Medical School, New York University and Boston University, have offered early graduation to their medical students to add more helping hands to healthcare facilities.

7. In the US, the students at the Harvard Medical School even formed a COVID-19 response team. Using a task force born out



of this initiative, they created separate educational modules for the doctors and non-expert people. They also created special teams for campaigning, helping medical staff with their daily chores, social work and for indirect patient care. Finally, they launched a mental health initiative to help people cope with these trying times.

8. Similarly, during the Polio outbreak of 1952 in Denmark, the students were tasked with manually ventilating the patient. These examples bare an eloquent testimony to the fact that the medical students can be an efficient contingency work force.

9. The only idea with which we have referred to the two articles above is to indicate how well in the European countries the medical students are extending their helping hands to combat the Covid-19 pandemic.

**The facts giving rise to this litigation may be summarised thus :**

10. The writ-applicants are third year M.B.B.S. students studying in the N.H.L. Municipal Medical College and L.G. Medical College respectively at Ahmedabad. Both these colleges are run, managed and controlled by the Ahmedabad Municipal Corporation. The writ-applicants seek to challenge the legality and validity of the Resolution dated 17<sup>th</sup> July 2020 issued by the State Government in its Health and Family Welfare Department, by which it has been resolved to avail the services of the

students of M.B.B.S., B.D.S., B.A.M.S./B.H.M.S., Physiotherapist, B.Sc. (Nursing), G.N.M. and B.Sc. (Microbiology).

11. The impugned resolution referred to above reads thus :

*“Regarding preparation of COVID Assistants to deal with COVID-19 Pandemic.*

*Government of Gujarat  
Health and Family Welfare Department  
Resolution No.NCV-102020-S.S.S.-2-Ga (Pa.Fa.)  
Date : 17/07/2020*

**RESOLUTION**

*“The Gujarat Epidemic Regulation-2020” has been implemented by the State Government vide Notification No.GP-9/NCV/102020/SF-1/Ga dated 13/03/2020 of this department under Epidemic Diseases Act, 1897 to undertake the work of prevention and control of Corona Disease.*

*Considering ongoing situation of Covid-19 in the state, shortage of human resources may arise in future. To mitigate this situation, this work can be assigned to the students of First, Second and Third Year M.B.B.S., B.D.S., B.A.M.S./B.H.M.S., Physiotherapist, B.Sc. Nursing, G.N.M. and various faculties of Final Year in the Government Medical/Para-medical Colleges, Medical Colleges under GMERS, Self Finance Medical College and Grant-in-aid Organizations by giving them training on various subjects.*

*The matter to assign work as Assistant in respective function to the students working in various faculties as above by giving them under-mentioned training under the guidance of the responsible officer was under the consideration of the Government.*

No.	Faculty	Training to be given	Duration of Training	Under which officer, work can be assigned ?
1	Final Year M.B.B.S.	1. Clinical Management of COVID-19. 2. Infection Prevention and Control.	5 Days	Nodal Officer – Dedicated Covid Hospital
2	Final Year B.D.S.	1. Clinical Management of COVID-19. 2. Infection Prevention and Control.	5 Days	Nodal Officer – Dedicated Covid Hospital
3	Final Year B.A.M.S./ B.H.M.S.	1. Field Surveillance and Supervision. 2. Isolation and Quarantine. 3. Infection Prevention and Control. 4. Psycho Social Care.	1 Day	Taluka Health Officer/ Medical Officer
4	Final Year Physio-therapist	1. Field Surveillance and Supervision. 2. Isolation and Quarantine. 3. Infection Prevention and Control. 4. Psycho Social Care.	1 Day	Taluka Health Officer/ Medical Officer
5	Final Year B.Sc. Nursing	1. Critical Care Assistant. 2. Infection Prevention and Control.	3 Days	Nodal Officer – Dedicated Covid Hospital

		3. <i>Psycho Social Care.</i>		
6	<i>Final Year G.N.M.</i>	1. <i>Critical Care Assistant.</i> 2. <i>Infection Prevention and Control.</i> 3. <i>Psycho Social Care.</i>	3 Days	<i>Nodal Officer – Dedicated Covid Hospital</i>
7	<i>Final Year B.Sc. Micro-biology</i>	1. <i>Sample Collection, Packaging and Transportation.</i> 2. <i>Infection Prevention and Control.</i> 3. <i>Psycho Social Care.</i>	1 Day	<i>Incharge Microbiology Department</i>
8	<i>First, Second and Third Year M.B.B.S., B.D.S., B.A.M.S./ B.H.M.S., Physio- therapist, B.Sc. Nursing, G.N.M.</i>	1. <i>Care Giver for Home Isolation.</i> 2. <i>Nursing Assistant.</i> 3. <i>Field Surveillance and Supervision.</i> 4. <i>Infection Prevention and Control.</i> 5. <i>Psycho Social Care.</i>	1 Day	<i>Taluka Health Officer/ Medical Officer</i>

*At the end of careful consideration, it is decided to take the help of all concerned students as "COVID ASSISTANT" in the Covid-19 designated hospitals at the end of prescribed training for the students of various faculties as mentioned in the table above.*

*All aforesaid students/trainees shall have to provide following services as Assistant in Covid-19 Designated Hospital allotted to them under the guidance of concerned superintendent of the hospital.*

*(1) Preventive Care:*

*Community surveillance, public awareness and health education- all the information that pertains to cause of disease and its prevention and activities associated to it.*

*Screening of the patient with Medical care, fever and oxygen deficiency under Doctor's supervision at Outrich Medical OPD.*

*Immunity enhancing food and details of medicine.*

*Counselling at the time of sample collection.*

*(2) Clinical Care:*

*Help desk, control room, counselling, health education, as care taker of patients put under home isolation.*

*Medical care under the supervision of Expert Doctor- basic medical checkup, patient screening, patient guide, maintenance of patient's file, help in medical procedure etc.*

*Sample collection, packaging and transport.*

*(3) Logistic:*

*Information of various medicines, stock maintaining and arrangement in which timely medicine and food is provided as per expert's advice.*

*Help in Hospital management, counseling of patients and their relatives.*

(4) *Other:*

*Health and medical data management.*

*Data analysis under the guidance of expert.*

*Tele-counseling over 1100, 104 and other helpline”*

12. The plain reading of the aforesaid resolution would indicate that with a view to meet the current pandemic situation the students of different categories referred to above have been directed to render their services in the field of Clinical Management of COVID-19, Infection Prevention and Control, Field Surveillance and Supervision, Isolation and Quarantine, Psycho-Social Care, Critical Care Assistant, Sample Collection, Packaging and Transportation, Care Giver for Home Isolation, Nursing Assistant, etc.

13. The impugned resolution also prescribes the time period or the duration for which training would be imparted to different categories of students having regard to the nature of the work that may be assigned to them.

14. It appears that pursuant to the above referred impugned resolution of the State Government, the two colleges issued a circular. The circular reads thus :

“CIRCULAR

*As per the instructions vide resolution no. NCV ~102020 SSS  
2-G (RE) dated 17/07/2020 issued by the Deputy Secretary,*

*Department of Health and Family Welfare, all local as Well as hosteler students studying in the 3ml year of MBBS Part-1 & Part-2 are being informed, in view of present pandemic of COVID, to report today at the college immediately. Allstudents, be it local or hosteler, are compulsorily required to report their presence. If a student does not report immediately, he/ she would be considered as absent and term will not be granted because of which he/she will not be considered as eligible for exam.”*

15. The writ-applicants are aggrieved by the above referred circular issued by the colleges because, according to the writ-applicants, the circular threatens them with dire consequences if they would fail report for training and to abide by the duties that may be assigned to them in accordance with the impugned resolution.

16. The writ-applicants have also annexed two sample notices issued by the colleges to the two particular students named therein as they failed to report for training on 22<sup>nd</sup> July 2020. These two notices have been annexed to highlight that the authorities are adamant to take stern steps against the students not willing to cooperate and render their services.

17. In such circumstances referred to above, the writ-applicants are here before this Court with the present writ-application.

**SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANTS :**

18. Mr.Anand Yagnik, the learned counsel appearing for the writ-applicants, vehemently submitted that there is no source of power to issue the impugned Government Resolution dated 17<sup>th</sup> July 2020. In other words, according to Mr.Yagnik, neither the Epidemic Disease Act, 1897 nor the Disaster Management Act, 2005, confer any power upon the State Government to issue executive instructions under Article 162 of the Constitution of India. Mr.Yagnik submitted that the impugned resolution dated 17<sup>th</sup> July 2020 issued by the State Government is *per se* illegal and contrary to the various provisions of the Constitution of India. The first and the foremost submission of Mr.Yagnik is that the impugned resolution nowhere states or clarifies that the same is mandatory/compulsory. According to Mr.Yagnik, although the impugned resolution has been issued by the State Government with a particular object, yet the plain reading of the same would indicate that it is voluntary in nature. In such circumstances, according to Mr.Yagnik the respondents nos.5 and 6 respectively could not have understood or read the impugned resolution as mandatory.

19. Mr.Yagnik invited the attention of this Court to Annexure RR1 at page-134 of the paper-book. The Annexure RR1 is in the form of instructions issued by the Government of India, Ministry of Health and Family Welfare, Medical Education Division, to all the ACS/Principal Secretaries/Secretaries (Medical Education/Health) of the States/UTs. The letter in the form of instructions dated 16<sup>th</sup> June 2020 reads thus :



*“Subject : Availability of faculties, Sr.Residents, Jr.Residents non-PG, Jr.Residents and Interns etc. during Covid times – reg.*

*Ma'am/Sir,*

*States are spearheading public health response to Covid-19 pandemic. It has emerged that as additional Covid healthcare facilities are being created, there is a corresponding requirement of increased human resources. To address this challenge, this Ministry had earlier issued SoPs for allocation of residents/PG students (copy enclosed) for this purpose,*

*2. Recently BOG-MCI has also been consulted in the matter and they have advised as follows :*

*a. The BOG-MCI has compiled data about availability of faculties, Sr.Residents, PG Residents, non-PG Jr.Residents in the medical colleges for use of their services during Covid-19 pandemic and made the same available on the MCI website dashboard at (<https://www.mciindia.org/CMS/>). As per this dashboard, based on the data uploaded by medical colleges so far, about two lakh duly qualified and trained doctors in medical colleges are already available.*

*b. The BOG-MCI has also considered the use of services of interns and MBBS students and has advised that interns, being provisionally registered*

*doctors, may also be trained in clinical management of Covid-19 cases under supervision of their faculties in Covid health facilities.*

*c. Further, BOG-MAI has mentioned that the final year MBBS students may also be taught about Covid-19 management in theory and practice, under supervision of faculties in Covid health facilities, but they cannot be assigned any clinical duties.*

*3. States/UTs are requested to take note of the above and take immediate appropriate action.”*

20. Mr.Yagnik placed much emphasis on clause 2(c) referred to above. According to Mr.Yagnik, the impugned resolution issued by the State Government dated 17<sup>th</sup> July 2020 runs contrary to or is in conflict with the instructions issued by the Government of India to the extent that the Government of India has clarified that although the final year M.B.B.S. students may be taught about the Covid-19 in theory and practice, yet they should not be assigned any clinical duties. According to Mr.Yagnik, the impugned Government Resolution makes clinical duties compulsory.

21. Mr.Yagnik would submit that the Government Resolution is violative of Article 14 of the Constitution of India because it is mandatory only for the medical students of the colleges run by the Corporation to render their services; whereas, the students of other Government medical colleges have been requested to render their services. In other words, according to Mr.Yagnik, it

is not compulsory or mandatory for the medical students of the Government colleges in the State of Gujarat to render their services. Mr.Yagnik further pointed out that in other States also it is not compulsory or mandatory for the medical students to render their services to combat the Covid pandemic.

22. Mr.Yagnik thereafter invited the attention of this Court to page-135 of the paper-book. Page-135, according to Mr.Yagnik, is a document purported to have been issued by the ICMR. It talks about the training resources for Covid-19 management. The idea with which Mr.Yagnik has referred to this document is to highlight that the medical interns are not to be assigned any clinical duties, drawing of samples by way of RT-PCR Test or Rapid Antigen Test. In short, according to Mr.Yagnik, the ICMR also does not talk about such services to be availed through the medical students.

23. Mr.Yagnik thereafter invited the attention of this Court to various provisions of the Epidemic Disease Act, 1897, more particularly Sections 2, 3 and 4 respectively. The argument of Mr.Yagnik is that in view of the provisions of the Act, 1897, no medical student can be made to compulsorily render his services even in critical times like the present Covid pandemic.

24. Mr.Yagnik thereafter invited the attention of this Court to the provisions of the Disaster Management Act, 2005, more particularly Sections 65, 66, 67 and 68 respectively. According to Mr.Yagnik, the impugned Government Resolution is not in consonance with the provisions of the Act, 2005, because the impugned Government Resolution does not stipulate any

conditions as may be permissible under the provisions of the Act, 2005.

25. Mr.Yagnik next submitted that only the Laboratory Technicians (Microbiology students) should be asked to perform the RT-PCR and the Antigen Tests. The argument of Mr.Yagnik is that, although his clients are final year M.B.B.S. students, yet they should not be asked to collect the samples and conduct the test. This submission of Mr.Yagnik is in the wake of the fact that no clinical duties can be assigned to the medical students.

26. Mr.Yagnik would submit that the impugned Government Resolution is manifestly arbitrary, and on this ground alone, it deserves to be quashed and set-aside. Mr.Yagnik submitted that the impugned Government Resolution is the result of excessive delegation of power and the same is devoid of any rational guidelines. Mr.Yagnik would submit that the Government Resolution is silent so far as the conduct of RT-PCR Test and the Rapid Antigen Test is concerned. However, for the first time, the State Government, in its affidavit-in-reply, has talked about the same, thereby indirectly enlarging the scope of the Government Resolution dated 17<sup>th</sup> July 2020.

27. In the last, Mr.Yagnik submitted that the Government, while issuing the impugned resolution, has not kept in mind the fine distinction between compulsory requisition of medical students and non-students.

28. In such circumstances referred to above, Mr.Yagnik prays that there being merit in his writ-application, the same be

allowed and the impugned Government Resolution may be quashed and set-aside.

29. We are constrained to observe at this stage that all throughout the course of hearing of this matter, more particularly, while hearing the submissions of Mr.Yagnik, what we could gather is only one thing, and that is the brazen attitude of the writ-applicants that come what may, they would not abide by the impugned resolution.

**SUBMISSIONS ON BEHALF OF THE RESPONDENTS :**

30. Mr.Kamal B.Trivedi, the learned Advocate General, assisted by Mr.Satyam Chhaya, the learned counsel appearing for the Corporation, and Ms.Manisha Lavkumar Shah, the learned Government Pleader, have vehemently opposed this writ-application. Mr.Trivedi would submit that it is very disheartening to note that the present litigation is at the instance of the final year M.B.B.S. students. Mr.Trivedi would submit that by virtue of Entry-6 of the State List and Entry-29 of the Concurrent List read with Article 162 of the Constitution of India, the impugned resolution has been issued by the State Government keeping in mind the larger public interest.

31. Mr.Trivedi would submit that the situation on account of the Covid pandemic in the State of Gujarat, more particularly in the major cities is very grim. He would submit that past almost five months, the front-line warriors in the form of Doctors, Nurses, Para-Medics, etc. have been rendering their services day and night and they are now quite exhausted. Despite the same,

they have continued to render their services without any complaints of any nature and with their fingers on their lips. Mr.Trivedi would submit that all such front-line warriors could be said to be rendering their services keeping only one thing in mind, i.e. the interest of the nation and mankind as a whole. According to Mr.Trivedi, unfortunately, here is a batch of writ-applicants who want to shirk from not only their moral responsibilities but also from their legal obligations. They are all final year M.B.B.S. students and within a short period of time they would be full-fledged doctors. Mr.Trivedi would submit that it is expected of all the writ-applicants to abide by the resolution of the State Government and willingly render their services in the larger interest of the society. Mr.Trivedi made one very important clarification. Mr.Trivedi invited our attention to the impugned resolution, more particularly the chart therein in five columns. The second column in the chart is in respect to the branch of study. The third column talks about what type of training is to be imparted. The fourth column talks about the duration of the training and the fifth column talks about under which officer the training would be imparted. On this issue, there was a lot of debate because, according to Mr.Yagnik, the learned counsel appearing for the writ-applicants, his clients fall within Serial No.1 being final year M.B.B.S. students and they are expected to undergo training for Clinical Management of Covid-19 and Infection Prevention and Control. Whereas, according to Mr.Trivedi, the writ-applicants herein fall within Serial No.8 and Serial No.8 talks about one-day training in the category of Care Giver for Home Isolation, Nursing Assistant, Field Surveillance and Supervision, Infection Prevention and Control and Psycho-Social Care. We are emphasizing on this part of the contention because at any cost the writ-applicants herein want to avoid

conducting the RT-PCR and Antigen Test. This, according to Mr.Yagnik falls within the ambit of Clinical Management of Covid-19. On the other hand, Mr.Trivedi, the learned Advocate General clarifies that the services of the writ-applicants is to be utilized only for the purposes of services stated in Category 8 of the Government Resolution dated 17<sup>th</sup> July 2020 and not under Category 1 and that is why they would be imparted one-day training only which is a pre-requisite for Category 8 students and not five-days training which is a pre-requisite for the Category 1 students.

32. Mr.Trivedi thereafter invited the attention of this Court to the Notification issued by the State Government dated 13<sup>th</sup> March 2020 in exercise of the powers conferred under Sections 2, 3 and 4 of the Epidemic Diseases Act, 1897. The Notification, more particularly Regulation 11, reads thus :

*“If cases of COVID-19 are reported from a defined geographic area such as village, town city, ward, colony, settlement, the District Administration of the concerned district shall have the right to implement following containment measures, but not limited to these, in order to prevent further spread of the disease*

- (i) *Sealing of the geographical area.*
- (ii) *Barring entry and exit of population from the containment area.*
- (iii) *Closure of schools, offices and banning public gatherings.*
- (iv) *Banning vehicular movement in the area.*
- (v) *Initiating active and passive surveillance of COVID-19*

*cases.*

- (vi) Hospital isolation of all suspected cases.*
- (vii) Designating any Government/Private building as containment unit for isolation of the cases.*
- (viii) Staff of all Government departments will be at disposal of District administration of the concerned area for discharging the duty of containment measures.*
- (ix) Any other measure as directed by Department of Health & Family Welfare.”*

33. Relying on clause (11), Mr.Trivedi would submit that it is open for the State Government to take any other measures as may be directed by the department of Health and Family Welfare. Mr.Trivedi would submit that the impugned resolution is in no manner contrary to the provisions of the Epidemic Disease Act nor the Disaster Management Act. Mr.Trivedi invited the attention of this Court to Section 2(e)(iv) of the Disaster Management Act. Section 2(e) defines the term 'disaster management', which reads thus :

*2(e) 'disaster management' means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for---*

- (i) prevention of danger or threat of any disaster;*
- (ii) mitigation or reduction of risk of any disaster or its severity or consequences;*
- (iii) capacity-building;*
- (iv) preparedness to deal with any disaster;*



- (v) *prompt response to any threatening disaster situation or disaster;*
- (vi) *assessing the severity or magnitude of effects of any disaster;*
- (vii) *evacuation, rescue and relief;*
- (viii) *rehabilitation and reconstruction;”*

34. According to Mr.Trivedi, the impugned resolution is in the form of a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for the preparedness to deal with any disaster.

35. Mr.Trivedi thereafter placed reliance on the averments made in paragraphs 5 to 13 of the affidavit-in-reply filed on behalf of the respondent nos.5 and 6 respectively. Paragraphs 5 to 13 read thus :

“5. *The above Government Resolution deals with students belonging to various categories of their education. However, the above named two respondent Colleges are concerned with Category Nos.1 and 8.*

<i>Sr. No.</i>	<i>Branch</i>	<i>Details of training</i>	<i>Duration of training</i>	<i>Officer who would give training</i>
1.	<i>Final Year MBBS</i>	<i>1. Clinical Management of COVID-19</i>  <i>2. Infection Prevention and Control</i>	<i>5 days</i>	<i>Nodal Officer – Dedicated COVID Hospital</i>

8.	1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> Year MBBS	1. Care given for Home Isolation.  2. Nursing Assistant.  3. Field Surveillance and Supervision.  4. Infection Prevention and Control.  5. Psycho Social Care	1 day	Taluka Health Officer/ Medical Officer
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(A) Category No.1 deals with students studying in Third Year of MBBS who are to be given training in the following two areas, viz.

- (i) Clinical Management of Covid-19; and
- (ii) Infection Prevention and Control.

(B) So far as Category No.8 is concerned, which comprises of students studying in the following different courses, viz.

- (a) MBBS – First, Second and Third Years
- (b) BDS – Bachelor of Dental Surgery
- (c) BAMS – Bachelor of Ayurvedic Medicines and Surgery
- (d) BHMS – Bachelor of Homeopathy and Medicines and Surgery.
- (e) Physiotherapy
- (f) B.Sc. – Nursing
- (g) General and Mid Wifery Course.

*(C) The students studying in the aforesaid 7 different disciplines are supposed to be given training of 1 day in the following areas:*

*(1) Care keeping for home isolation - whereas they are supposed to visit the asymptomatic and mild symptomatic persons have been put in isolation which requires to visit periodically for the purpose of measuring pulse, Blood Pressure and temperature.*

*(2) Nursing Assistant - This area covers the same area referred to above.*

*(3) Field Surveillance and supervision and contact tracing which extends to sample collection, testing. Data collection of Pink, Red and Orange Zone.*

*(4) Infection Prevention and Control – To see that equipments deals with the training in the matter of regulating Personal Protective areas viz. (i) PPE Kit, (ii) Mask, (iii) Gloves, (iv) Faceshield, etc., (v) Psycho Social care which deals with counselling.*

*6. In view of prevailing situation of COVID-19, the respondent Nos.5 and 6 colleges called their students of 3rd year MBBS, who were desired to report for training, so that after completion of preliminary training, they can be posted in certain specific areas of activities, not necessarily related*

to clinical management. In view of above-referred Resolution dated 17.7.2020 issued by the State of Gujarat, the respondent colleges had issued Circular dated 22.7.2020, whereby the students studying in 3rd year MBBS, Part-I and II were asked to report to the colleges compulsorily, considering the situation. The local students and the students who are staying at hostel were asked to report to the colleges immediately. As most of the students did not report to the colleges, on 23.7.2020 a notice was issued by the respondent colleges and students were asked to report within one day, failing which appropriate proceedings would be initiated under Epidemic Disease Act, 1897. Despite having issued the above-referred circular dated 22.7.2020 and 23.7.2020, very minimum number of students had reported for training and hence, the office order dated 27.7.2020 was issued by the colleges and students were bifurcated into 3 different groups. The groups were bifurcated for reporting on 28.7.2020, 29.7.2020 and 30.7.2020. However, even in response to this office order dated 27.7.2020, there was no proper response from the students. The students were put to notice that the training and consequential duties are mandatory and any defiance by the students, would lead to breach of provision of the Epidemic Disease Act, 1897 and Regulation - 2020. Thereafter, on 29.7.2020, show cause notices are issued and the students are directed to immediately follow the duty roster as referred to in above-referred notice/office order dated 27.7.2020 and the students were also asked to show cause as to why (i) appropriate proceedings should not be initiated for breach of provision of the Epidemic Disease Act,

1897, the Disaster Management Act 2005 and the Ordinance and Regulations, 2020 and they were also asked to show cause as to why (ii) appropriate proceedings should not be initiated against them for committing breach/willful defiance of the instructions issued by the colleges. The above-referred circulars dated 22.7.2020, 23.7.2020, 27.7.2020 and show cause notice dated 29.7.200 are annexed hereto and marked as Annexure-R-I, II, III and IV respectively to this reply. Despite having issued the Circular referred to above, in NHL Hospital, out of 410, only 43 students have so far reported, whereas in case of AMC MET Medical College, out of 234 students, only 41 students of MBBS have reported for training.

7. It is to be noted here that since March, 2020, the Resident Doctors (PG students) and Interns students of NHL Municipal Medical college and AMC MET Medical college are working as Covid Warriors. They are performing different duties like Covid OPD and ward duties in SVP Hospital, Field Surveillance duties and getting samples of citizens of Ahmedabad for RT-PCR test and Antigen tests by visiting different area of city at Highway, performing duties at Urban Health centres, performing duties at Covid care centers and Private hotels acquired by AMC for covid care treatment, duties of data collection and medical supervision at private hospitals acquired by AMC in consultation with Faculty of Medical college, Airport screening duties etc.

8. It is submitted that the following details would suggest that Interns and Resident Doctors of Respondent Nos.5 and

6 medical colleges i.e. NHL Municipal Medical College and AMC MET Medical Colleges are working as Corona Warriors and performing their duties in this difficult time since March, 2020. Summary of details of Resident Doctors and Interns as mentioned in this paragraph can be summarized as under:

NHL MUNICIPAL MEDICAL COLLEGE	
INTERN LIST	126
RESIDENT DOCTORS	612
TOTAL	738
AMC MET MEDICAL COLLEGE (LG)	
INTERN LIST	135
RESIDENT DOCTORS	263
TOTAL	398

9. It is submitted that over and above the above-referred Interns and Resident Doctors (PG Students) of the said two medical Colleges, the students of AMC Dental College are also performing their respective duties as Corona Warriors since March, 2020. The details of such students studying within AMC Dental College can be summarized as under:

AMC DENTAL COLLEGE	
INTERN LIST	69
RESIDENT DOCTORS	15
TOTAL	84

10. It is submitted that 38 under graduate students of 3rd

*year SBB Physiotherapy College (managed by AMC MET) and 170 Residence Doctors (PG students), total 55 students of SBB Physiotherapy College are performing their respective duties as Corona Warriors since 23.7.2020. Similarly, under graduate students of 1st to 4th year of AMC MET Nursing College are performing their respective duties as Corona Warriors from 3rd July. The details of above-referred students of SBB Physiotherapy College and AMC MET Nursing College, can be summarized as under:*

NHL MUNICIPAL MEDICAL COLLEGE	
UNDER GRADUATE (3RD YEAR)	Number 38
RESIDENT DOCTORS	17
TOTAL	55
AMC MET NURSING COLLEGE & SCHOOL	
UNDER GRADUATE (1ST TO 4TH YEAR)	Number 183
TOTAL	183

*11. As stated above, in view of the rising of number of infected persons within the State of Gujarat, the State Government has issued above-referred resolution dated 17.7.2020. Within the Ahmedabad city, due to unlock situation in view of removal of lockdown, there is every possibility of community transmission, may be in near future and the number of infected persons may rise, more particularly in view of unlock situation, as other citizens/visitors from outside Ahmedabad are entering Ahmedabad*

daily in huge number. This apart, another reason for this is the pattern of residential units, more particularly within old city areas which are in absolute near proximity. Further, the Medical and Paramedical staff, who are doing their respective duties for clinical management of COVID-19, infection prevention and control of COVID-19, Field Surveillance and Supervision, Isolation and Quarantine and Testing and other ancillary duty, are engaged in constant work since last 4 months and hence, they are exhausted. Further, the authorities are apprehending scarcity of trained medical and paramedical personnel as the infection of virus may rise in view of unlock situation. As stated above, after lockdown, people started moving from one place to another. As a result of this, there is a fair chance of increase in Covid positive cases and hence, the Ahmedabad Municipal Corporation has strategies to screen the people coming in city area from outside at the borders. This would add load to current Corona Warriors and their workload. Further, in view of unlock situation, in near future, the air traffic would increase and the numbers of flights including domestic as well as international would also increase. In that situation, the authorities would require more trained medical and paramedical personnel to screen the passengers at airport and railway station etc. Further, as a part of home care facility to home quarantined patients, the Ahmedabad Municipal Corporation has policy to send medical personnel for home treatment and parameters checking on daily basis, so as to control the virus. As per present scenario, the work of testing is undertaken by Interns and Resident Doctors. However, in view of above-referred policy of sending medical



*personnel for home treatment and parameters checking, those Corona Warriors i.e Interns and Residence Doctors would be deployed for such purpose. Most of the said Corona Warriors i.e. Interns and Residence Doctors were taking Antigen Testing. However, in view of above-referred new policy, their services would be needed to provide home treatment to the home quarantined patients. Therefore, considering the extraordinary difficult situation, the respondent authorities and colleges have directed the 3rd year MBBS students (410 students of NHL Medical College and 234 students of AMC MET Medical College) and they were called for training pertaining to Corona and then, they would be asked to perform their duties of Antigen Testing as of now, subject to further requirement. It is to be noted here that these 3rd year MBBS students would be entrusted duty of Antigen Testing under the supervision of Medical Officer. It is made clear to all students that all necessary precautions for their individual safety would be taken by the respondent authorities and colleges including PPE kit, Breakfast along with ORS, Food arrangement during the duty and accommodation, if need be. It is reiterated that the respondent authorities and the colleges would take all necessary steps in tune with the guidelines of the Central Government and prevailing policy, by providing all safety gears so as to protect the health of the students, who would be entrusted the duty of Antigen Testing.*

*12. It is submitted that out of all the above-referred Interns and Residence Doctors (PG students), undergraduate students, who are working in the field since last more than 4*

months, with the good fortune and in view of the grace of God and in view of precautionary measure taken by the concerned students and the respondent authorities, there are no active corona positive cases amongst the said students. Thus, there is no question of any fear at the end of students of 3rd year MBBS and even otherwise, they would be doctors very soon and, therefore, it is not acceptable from medical students to take up such improper and ingenuine stand, more particularly when the authorities are keen to provide all safety measures.

13. It is submitted that as of now, the authorities have decided to entrust duty of Antigen Testing to these students as the authorities want to undertake mass testing so as to reduce the danger of community transmission. As stated above, all safety gears and protection would be provided to and even otherwise, for the purpose of Antigen Testing, there is minimum possibility of personal contact with the patient. There are two types of testing available (i) RT-PCR Testing and, (ii) Antigen Testing. For the purpose of RT-PCR Test, the collector of swab has to take sample from throat (Oropharyngeal Swab) as well as nose (Nasopharyngeal Swab). In case of Antigen Testing, the collector of swab has to take sample only from nasal. For ready reference, the summary of the process for conducting Antigen Testing including the photographs is enclosed herewith and marked as Annexure-R-V to this reply. Thus, the above-referred details would make it clear that for the purpose of Antigen Testing which would be conducted by the students, whose interest is involved in the captioned petition, would have

*minimum risk in the process and hence, there is no reason for them to protest against training and their respective duties.”*

36. Mr.Trivedi next submitted that there is no discrimination of any nature and, therefore, it cannot be said that the impugned resolution is violative of Article 14 of the Constitution of India. Mr.Trivedi goes to the extent of submitting that having regard to the current situation, no classification can be drawn as regards what type of services or duties would be performed by various categories of medical students. According to Mr.Trivedi, it is a call of duty and it is expected of the writ-applicants to respond to such call in true spirit and with all dedication. But, unfortunately, there is a revolt at the end of the writ-applicants.

37. In the last, Mr.Trivedi clarified that as on date the colleges are not functioning. However, the day the colleges start functioning, the duties that may be assigned to the writ-applicants shall come to an end. The Government would not go to the extent of asking the writ-applicants to continue to render their services even at the cost of not attending the college. Mr.Trivedi further clarified that the period during which the college has remained closed on account of which the education could not be imparted, that period would later be utilized for the purpose of imparting education and only thereafter the exams would be conducted.

38. In such circumstances referred to above, Mr.Trivedi, the learned Advocate General, prays that there being no merit in this writ-application, the same may be rejected.

**ANALYSIS :**

39. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is, whether we should strike down the impugned Government Resolution dated 17<sup>th</sup> July 2020 as being illegal or contrary to the provisions of the Constitution of India.

40. We shall first deal with the argument of Mr.Yagnik that the impugned resolution is manifestly arbitrary. What is manifestly arbitrary is obviously unreasonable and being contrary to the rule of law, would violate Article 14 of the Constitution of India. There is no doubt that Article 14 strikes at arbitrariness in the State action and ensures fairness and equality of treatment. At the same time, the burden is on one, who canvasses that the State action is unconstitutional. In doing so, the necessary facts to sustain the plea of discrimination are necessary to be led. It is necessary to adduce cogent and convincing evidence to prove those facts. In order to establish that the protection of equal opportunity clause has been denied to them, it is not enough for the writ-applicants to say that they have been treated differently from others, not even enough that a differential treatment has been accorded to them in comparison with other similarly circumstanced.

41. As held by the Supreme Court in Shayara Bano v. Union of India and others, reported in (2017)9 SCC 1, manifest arbitrariness must be something done by the Legislature

capriciously, irrationally and/or without adequate determining principle. When something is done, which is excessive and disproportionate, such legislation would be manifestly arbitrary. In our opinion, by any stretch of imagination the impugned Government Resolution calling upon the writ-applicants being final year M.B.B.S. students to render their services in this hour of crisis cannot be termed as arbitrary, much less, manifestly arbitrary. The impugned resolution has been issued with a definite purpose and object. It is the need of the hour that compelled the State Government to come out with such resolution so that the State Government gets a helping hand in combating with the Covid-19 pandemic.

42. Our reading of the impugned resolution is that as on date all that has been asked to be done is to undergo the necessary training for a particular period of time depending on the nature of the services required. For instance, if the nature of the services has something to do with the Clinical Management of Covid-19 and Infection Prevention and Control, the training would be for a period of five days; whereas, if the services is with regard to the Critical Care Assistant and Psycho-Social Care, the duration of the training would be for a period of three days. In all other cases, the duration of the training would be for a period of one day. It is very difficult for us to understand why the writ-applicants being final year M.B.B.S. students are resisting to even undergo the necessary training so that in future if their services are required, they can be deployed in a particular designated Covid hospitals to render their services according to their training.

43. In our opinion, the reading of the Government Resolution by Mr.Yagnik is not correct. We do not agree with Mr.Yagnik that the Government Resolution should be read or understood as services to be rendered on own free will and volition. If the resolution is read in the manner in which Mr.Yagnik wants us to read, the whole object with which the resolution has been issued would get frustrated. The State Government is badly in need of Corona Warriors. As days are passing by, the cases in the State of Gujarat are increasing. As on date, the figure has crossed 82,000. Every day more than 1000 cases are reported in the entire State of Gujarat.

44. Mr.Trivedi is right in his submission that it has become very difficult to procure necessary help in the form of medical services. There is no other option but to ask the final year M.B.B.S. students who are now quite trained, to render their services. There is no discrimination worth the name between the students of Government Medical Colleges and the students of the medical colleges run and controlled by the Corporation. In fact, it is a matter of policy. If the other States have not made it compulsory for the medical students to render their services, that does not mean that the State of Gujarat cannot issue a resolution making it compulsory for the medical students to render their services. In such a situation, there is no discrimination and, therefore, no question of any violation of Article 14 of the Constitution of India.

45. We are also not impressed by the submission of Mr.Yagnik that the impugned resolution is in conflict with or contrary to the provisions of the Epidemic Disease Act, 1897 and also the

provisions of the Disaster Management Act, 2005. We fail to understand in what manner the impugned resolution could be said to be contrary to the provisions of the Acts.

46. We are not impressed by the submission of Mr.Yagnik that the affidavit-in-reply filed by the State Government has enlarged the scope of the Government Resolution dated 17<sup>th</sup> July 2020. The argument of Mr.Yagnik is that the impugned Government Resolution is silent as regards the conduct of the RT-PCR Test and the Rapid Antigen Test. Mr.Yagnik pointed out that although Category 1 in the chart may encompass the two tests referred to above being falling within the ambit of Clinical Management of Covid-19 and Infection Prevention and Control, yet Category 8 does not talk about the same. However, it is only in the affidavit-in-reply that the State Government has tried to explain the scope of the same even in Category 8. We are of the firm opinion that even if we go by the stance of the State Government that although the writ-applicants fall within the Category 8 of the impugned resolution and falling within Category 8 they need to undergo only a day's training, yet it is always open for the State Government to ask the writ-applicants to undergo five days' training of Clinical Management of Covid-19, if need arises. Therefore, we make it abundantly clear that it shall be open for the State Government, if need arises, to ask the writ-applicants who are final year M.B.B.S. students to undergo five days training of Clinical Management of Covid-19 and Infection Prevention and Control. To put it in simpler words, if a particular student undergoes one day's training, then there is no question of asking him to conduct the RT-PCR Test or the Rapid Antigen Test, but if the very same student undergoes five days' composite training, then there is no harm if he is asked to conduct the RT-

PCR Test and the Rapid Antigen Test.

47. We are not impressed by the submission of Mr.Yagnik that in view of the instructions issued by the Government of India dated 16<sup>th</sup> June 2020 (Annexure-RR1, page-134) addressed to all the States/UTs that the final year M.B.B.S. students may be taught about Covid-19 management in theory and practice, under the supervision of faculties in Covid health facilities but they should not be assigned any clinical duties, the impugned resolution should be quashed. We are afraid, to what extent such instructions issued by the Government of India are binding to the State Government, more particularly, when the impugned resolution has been issued by the State Government in exercise of its power under Article 162 of the Constitution of India to be read with Entry-6 of the State List, which talks about public health and sanitation; hospitals and dispensaries, and Entry-29 of the Concurrent List, which talks about prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

48. In short, without going into any further controversy, we are of the opinion that the State, in exercise of its executive power, is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. The intention in issuing the impugned resolution has a direct nexus with public interest. In such circumstances, such a decision of the State Government is not liable to be interfered with as the power of the State cannot



be abridged on the basis of an individual interest. In general, this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India would not exercise its power of judicial review to interfere with a policy made by the Government in exercise of its power under Article 162 of the Constitution of India, particularly where it involves public health and safety. (See *Shri Sitaram Sugar Company Limited and another v. Union of India and others*, AIR 1990 SC 1277)

49. The modern phenomenon in administrative process is an emergence of the institution of directions. Directions are less formal than rules. Administrative authorities issue directions for a variety of purposes and in a variety of ways, for example, through letters, circulars, instructions, orders, memoranda, directives, bulletins, guidelines, manuals, pamphlets, public notices, press notes, clarifications, etc. Directions may be specific being applicable to a specific person or matter or may be general in nature laying down some general norm or principle or policy, practice or procedure to be followed in all similar cases. The directions are part and parcel of the internal administrative procedure of a Government department. Directions are issued under the Government's administrative and not legislative power. Articles 73(1) and 162 confer administrative power on the Central and the State Government respectively. For example, Article 73(1) says that subject to the provisions of the Constitution, the executive power of the Union extends to matters with respect to which the Parliament has power to make laws. Similarly, under Article 162, the executive power of the State extends to matters with respect to which a State Legislature has power to make laws. The administrative power of a Government is thus co-extensive with its legislative power.

50. A decision of a Government in exercise of its executive power is reviewable by this Court under Article 226 of the Constitution. But, the extent of judicial review is limited to examining, whether the Government has acted *bonafide* and on relevant considerations only and the same cannot be examined as if it is an appeal. When the State is badly in need of the services of the final year M.B.B.S. students to meet with the emergent situation of the Covid-19 pandemic, then in such circumstances, an order can be validly and legally made by the Government even without furnishing reasons and the court may not even compel the Government to give reasons. But, when the Government itself chooses to give reasons, though it is not bound to give reasons, this Court can examine the validity of such reasons to the extent whether they are relevant to the subject and no more. If any of the reasons given by the Government is found to be irrelevant, the court can only strike down the order but cannot substitute its own reasons or uphold the order as it can do in cases of judicial or quasi-judicial orders.

51. In the aforesaid context, we may refer to and rely upon a decision of the Supreme Court in the case of *Asif Hameed and others v. State of Jammu and Kashmir and others*, reported in AIR 1989 SC 1899, wherein in paragraph 19, the following has been observed :

*“19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike-down the*

*action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. ”*

52. There need not be any debate on the principle of law that the executive Governments are bound to conform not only to the law of the land but also to the provisions of the Constitution. Even the Legislature cannot override the fundamental rights guaranteed by it to the citizens. Even if the acts of the executive are deemed to be sanctioned by the Legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the writ-applicants guaranteed under Part III of the Constitution. On the other hand, even if the acts of the executive are illegal in the sense that they are not warranted by law, but no fundamental rights or any other legal rights of the writ-applicants have been infringed thereby, the latter would obviously have no right to complain under Article 226 of the Constitution. The material question for consideration therefore is: What fundamental rights of the petitioners, if any, have been violated by the impugned resolution and acts of the executive Government of Gujarat undertaken by them in larger public interest keeping in mind the current Covid-19 pandemic situation ?

53. In the aforesaid context, we have to our advantage a Constitution Bench decision of the Supreme Court in the case of Rai Sahib Ram Jawaya Kapur and others v. The State of Punjab, reported in AIR 1955 SC 549, wherein the Supreme Court has explained Article 162 of the Constitution of India.

54. In the case before the Supreme Court, a petition under Article 32 of the Constitution of India was preferred by six individuals who were carrying on the business of preparing, printing, publishing and selling text-books for different classes in the schools of Punjab. They alleged that the Education Department of the Punjab Government had, in pursuance to their policy of nationalization of text-books, issued a series of notifications regarding printing, publication and sale of those text-books which could be said to have placed unwarrantable restrictions upon the rights of the petitioners to carry on their business. It was argued before the Supreme Court that no restrictions could have been imposed upon the petitioners' right to carry on the trade guaranteed under Article 19(1)(g) of the Constitution of India by mere executive orders without proper legislation and that legislation, if any, must conform to the requirement of clause (6) of Article 19 of the Constitution of India. Accordingly, it was prayed before the Supreme Court to issue writs in the nature of mandamus directing the Punjab Government to withdraw the notifications which had affected their rights. The Supreme Court, while dismissing the petition, observed thus :

*“6. The first point raised by Mr. Pathak, in substance, amounts to this, that the Government has no power in law to*

carry on the business of printing or selling text books for the use of school students in competition with private agencies without the sanction of the legislature. It is not argued that the functions of a modern State like the police States of old are confined to mere collection of taxes or maintenance of laws and protection of the realm from external or internal enemies. A modern State is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. What Mr. Pathak says, however, is, that as our Constitution clearly recognises a division of governmental functions into three categories, viz., the legislative, the judicial and the executive, the function of the executive cannot but be to execute the laws passed by the legislature or to supervise the enforcement of the same. The legislature must first enact a measure which the executive can then carry out. The learned counsel has, in support of this contention, placed considerable reliance upon Articles 73 and 162 of our Constitution and also upon certain decided authorities of the Australian High Court to which we shall presently refer.

7. Article 73 of the Constitution relates to the executive powers of the Union, while the corresponding provision in regard to the executive powers of a State is contained in Article 162. The provisions of these Articles are analogous to those of section 8 and 49 respectively of the Government of India Act, 1935 and lay down the rule of distribution of executive powers between the Union and the States, following the same analogy as is provided in regard to the distribution of legislative powers between them. Article 162,

*with which we are directly concerned in this case, lays down :*

*“Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :*

*Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.”*

8. *Thus under this Article the executive authority of the State is executive in respect to matters enumerated in List II of Seventh Schedule. The authority also extends to the Concurrent List except as provided in the Constitution itself or in any law passed by the Parliament. Similarly, Article 73 provides that the executive powers of the Union shall extend to matters with respect to which the Parliament has power to make laws and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or any agreement. The proviso engrafted on clause (1) further lays down that although with regard to the matters in the Concurrent List the executive authority shall be ordinarily left to be State it would be open to the Parliament to provide that in exceptional cases the executive*

power of the Union shall extend to these matters also. Neither of these Articles contain any definition as to what the executive function is and what activities would legitimately come within its scope. They are concerned primarily with the distribution of the executive power between the Union on the one hand and the States on the other. They do not mean, as Mr. Pathak seems to suggest, that it is only when the Parliament or the State Legislature has legislated on certain items appertaining to their respective lists, that the Union or the State executive, as the case may be, can proceed to function in respect to them. On the other hand, the language of Article 162 clearly indicates that the powers of the State executive do extend to matters upon which the state Legislature is competent to legislate and are not confined to matters over which legislation has been passed already. The same principle underlies Article 73 of the Constitution. These provisions of the Constitution therefore do not lend any support to Mr. Pathak's contention.

14. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions

that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of executive are limited merely to the carrying out of these laws.

15. The limits within which the executive Government can function under the Indian Constitution can be ascertained without much difficulty by reference to the form of the executive which our Constitution has set up. Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.



21. *These discussions however are to some extent academic and are not sufficient by themselves to dispose of the petitioners' case. As we have said already, the executive Government are bound to conform not only to the law of the land but also to the provisions of the Constitution. The Indian Constitution is a written Constitution and even the legislature cannot override the fundamental rights guaranteed by it to the citizens. Consequently, even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution. On the other hand, even if the acts of the executive are illegal in the sense that they are not warranted by law, but no fundamental rights of the petitioners have been infringed thereby, the latter would obviously have no right to complain under Article 32 of the Constitution though they may have remedies elsewhere if other heads of rights are infringed. The material question for consideration therefore is : What fundamental rights of the petitioners, if any, have been violated by the notifications and acts of the executive Government of Punjab undertaken by them in furtherance of their policy of nationalisation of the text books for the school students ?”*

55. We pose the very same question as posed by the Supreme Court in the above referred judgment : “What fundamental rights or any other legal rights of the writ-applicants could be said to

have been violated by the impugned resolution and acts of the executive Government of Gujarat ?” In our view, none.

56. Thus, by reasons of executive instructions issued under Article 162 of the Constitution of India, the State is entitled, in absence of any legislation operating in the field, to issue such directions which are permissible in terms of the above referred two Entries in the State List and the Concurrent List of the Seventh Schedule of the Constitution of India.

57. In *Bishambhar Dayal Chandra Mohan v. State of U.P.*, reported in AIR 1982 SC 32, it was held :

*“...The executive power of a modern State is not capable of any precise definition. In Ram Jawaya Kapur v. State of Punjab, Mukherjea, C.J., dealt with the scope of Arts. 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its scope. It was observed: “Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away”.*

58. It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of the executive functions which may comprise both the formulation of the policy

as well as its execution. In other words, the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a standstill.

59. The aforesaid situation also takes care of the submission of Mr.Yagnik that the State Government has not been able to show any source of power to issue the impugned Government Resolution dated 17<sup>th</sup> July 2020.

60. In the aforesaid context, we may refer to a decision of the Supreme Court in the case of Pt.Parmanand Katara v. Union of India and others, reported in (1989)4 SCC 286, more particularly the observations as contained in paragraphs 8 and 9 respectively, which read thus :

*“8. Article 21 of the Constitution casts the obligation on the State to preserve life. The provision as explained by this Court in scores of decisions has emphasised and reiterated with gradually increasing emphasis that position. A doctor at the Government hospital positioned to meet this State obligation is, therefore, duty-bound to extend medical assistance for preserving life. Every doctor whether at a*

*Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, laws of procedure whether in statutes or otherwise which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way. On this basis, we have not issued, notices to the States and Union Territories for affording them an opportunity of being heard before we accepted the statement made in the affidavit of the Union of India that there is no impediment in the law. The matter is extremely urgent and in our view, brooks no delay to remind every doctor of his total obligation and assure him of the position that he does not contravene the law of the land by proceeding to treat the injured victim on his appearance before Him either by himself or being carried by others. We must make it clear that zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules, the victim has to be sent elsewhere or how the police shall be contacted, the guideline indicated in the 1985 decision of the Committee, as extracted above, is to become operative. We order accordingly.*

*9. We are of the view that every doctor wherever he be within the territory of India should forthwith be aware of this position and, therefore, we direct that this decision of ours*

*shall be published in all journals reporting decisions of this Court and adequate publicity highlighting these aspects should be given by the national media as also through the Doordarshan and the All India Radio. The Registry shall forward adequate number of copies of this judgment to every High Court so that without delay the respective High Courts can forward them to every Sessions Judge within their respective jurisdictions and the Sessions Judges in their turn shall give due publicity to the same within their jurisdictions. The Medical Council of India shall forward copies of this judgment to every medical college affiliated to it. Copies of the judgment shall be forwarded to every State Government with a direction that wide publicity should be given about the relevant aspects so that every practising doctor would soon become aware of the position.”*

61. We may also refer to a recent pronouncement of the Supreme Court in the case of Association of Medical Superspeciality Aspirants and Residents and others v. Union of India and others, reported in (2019)8 SCC 607, more particularly the observations made in paragraphs 17, 18, 22 and 23 to 28, which read thus :

*“17. Schedule VII List I Entry 66 to the Constitution refers to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Entry 25 of List III of the 7th Schedule deals with education, including technical education, medical education and universities, subject to the*

*provisions of entries 63, 64, 65 and 66 of List I. Legislations can be made by the State Legislature relating to medical education subject to the legislation made by the Parliament. The Medical Council of India Act governs the field of medical education in this country. Admittedly, there is no provision in the Medical Council of India Act touching upon the subject matter of compulsory bonds. Therefore, the States are free to legislate on the subject matter of medical bonds. Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders Under Article 162 of the Constitution on matters over which the State legislature has the power to legislate. The Notifications issued by the State Governments imposing a condition of execution of compulsory bonds at the time of admission to postgraduate courses and super Speciality courses cannot be said to be vitiated due to lack of authority or competence. The field of bonds requiring compulsory employment is not covered by any Central Legislation. Therefore, the submissions made on behalf of the Appellants that the States lacked competence to issue the notifications as the field is occupied are rejected.*

*18. The Appellants are aggrieved by the decision of the State Governments imposing conditions for their admission in the post-graduate courses and super Speciality courses. According to them, the State Governments have understood the decision of this Court in Harsh Pratap Sisodia (supra) to be a restraint on the exercise of their power in matters*

*relating to eligibility criteria for admission to medical course. Suddenly, the introduction of the compulsory bonds after 15 years of the judgment in Harsh Pratap Sisodia (supra) is the result of decision taken by the State Governments which is dubbed by the Appellants as arbitrary. This Court in Harsh Pratap Sisodia (supra) was concerned with the additional eligibility criteria being introduced by the State Governments for the 15% All India Quota students. The decision taken by the State Governments to impose a condition of compulsory bond for admission to post-graduate courses and super Speciality is on the basis of relevant material. Huge infrastructure has to be developed and maintained for running medical colleges with post-graduate and super Speciality courses. The amount of fees charged from the students is meagre in comparison to the private medical colleges. Reasonable stipend has to be paid to the doctors. Above all, the State Governments have taken into account the need to provide health care to the people and the scarcity of super specialists in their States. Consequently, a policy decision taken by the State Governments to utilize the services of doctors who were beneficiaries of Government assistance to complete their education cannot be termed arbitrary.*

22. *Article 21 of the Constitution of India imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein are duty bound to extend medical assistance for preserving human life. Failure*

on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right guaranteed Under Article 21 of the Constitution. Therefore, in a welfare State it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health.

23. Article 47 of the Constitution reiterates the constitutional obligation imposed on the State to improve public health. The Directive Principle provides as follows:

“47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

24. In *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India* MANU/SC/0058/1980 : (1981) 1 SCC 246 it was held that maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends the building of the society of which the Constitution makers envisaged. It was further observed in the above judgment that attending to public health,



*therefore, is of high priority-perhaps the one at the top.*

25. *It is for the State to secure health to its citizens as its primary duty. No doubt the Government is rendering this obligation by opening Government hospitals and health centers, but in order to make it meaningful, it has to be within the reach of its people, as far as possible, to reduce the queue of waiting lists, and it has to provide all facilities to employ best of talents and tone up its administration to give effective contribution, which is also the duty of the Government.*

26. *Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs*

*human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.*

27. *To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasizing, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III of the Constitution. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence.*

28. *The State's obligations are not satisfied solely by refraining from imposing limitations on the right to human dignity. The State must also take action to protect human dignity and to facilitate its realization. The constitutional right to dignity is intended to ensure human beings' political and civil liberties as well as their social and economic freedoms."*

62. We are at pains to note one very unusual argument of Mr.Yagnik. Mr.Yagnik tried to distinguish the above referred two decisions of the Supreme Court on the premise that those decisions talk about doctors; whereas, his clients, as on date, are not doctors but they are final year M.B.B.S. students. The

students are the future of this country. Being students they owe lot of responsibilities and obligations. In the near future they are going to be the members of the medical fraternity. Therefore, it hardly makes any difference whether as on date they are full-fledged doctors or final year M.B.B.S. students. We understand this much that being the final year M.B.B.S. students, they are now well trained in all faculties of Medicine. They cannot say that they would not do a particular type of work. We are asking a question to ourselves. Are the writ-applicants before us frightened to render their services or they want to shirk from their responsibility to perform the duties in public interest ? Whatever may be the reason, ultimately, by this litigation they have established that whatever may happen to the society at large, they would like to remain safe.

63. In the overall view of the matter, we are convinced that we should not disturb the impugned Government Resolution.

64. In the result, this writ-application fails and is hereby rejected.

65. Mr.Yagnik, learned counsel appearing for the writ-applicants, in the course of his submissions, made a request that in the event if this Hon'ble Court deems fit to reject this writ-application, then a certificate may be issued under Article 134A of the Constitution of India for appeal to the Supreme Court.

66. Having regard to the fact that this litigation does not involve a substantial question of law of general importance, the request made by Mr.Yagnik to issue such certificate is declined.

67. Although we have declined to interfere with the impugned Government Resolution, we would like to direct the State Government to look into the following aspects :

(1) The students must be thoroughly trained in the tasks and jobs assigned to them. Adequate training programme should be held that teaches them the basics. The faculty should make sure that the students feel skilled and confident before they start practical work.

(2) The students would be putting in their time and efforts and this must not go unnoticed. The college and the Government shall appreciate their efforts and offer a stipend payment for their hard work.

(3) The students must not feel that their lives or the lives of their loved ones are at risk. The Government should make adequate arrangements for the students on Covid duty to self isolate themselves.

(4) Severely immunocompromised students, who have chronic underlying conditions like diabetes, heart conditions, cardiovascular diseases or others, shall be spared from compulsory duty under the pretext of their service being a severe health hazard.

(5) In appreciation, the academic transcripts of the students should mention that they boldly performed duties at the Covid hospitals and centers during the time of

pandemic. This is honourable and will be appreciated across the globe when they apply for further studies and specializations.

68. Before we close this litigation, we would like to observe that the very first line of Mr.Yagnik's argument was that this writ-application filed by the final year M.B.B.S. students is in '*loco parentis*'. The Latin for 'in the place of a parent'. It refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent. In the case on hand, the writ-applicants have conferred the status upon this Court of '*loco parentis*'. If that be so, then we would like to convey the following message to all 132 students before us :

Any one with reasonable intelligence matched with hard work can become a doctor and attain the coveted degree of MBBS. However, privileged are the few who are blessed with an opportunity to use their degree and learning to heal this ailing world while it is going through a global crises. You have an opportunity now to not just become the qualified doctors but front-line soldiers in this war against the Covid-19 pandemic. It is neither a demand nor a request. In our opinion, this is a privilege that all of you are blessed with to achieve the self satisfaction of becoming Doctors for a cause. On one hand it is a call of duty. But more than duty, here is an opportunity of a life time to experience the beautify of healing on a scale and challenges which, in our opinion, happen to be historic. Your reward will be the satisfaction of saving lives to scale. Your reward will be self-fulfillment. You will earn the respect of your

family, friends and peers as front-line Covid Warriors but, above all, else you will find new respect for life and for living with a sense of purpose and responsibility. Rise to this opportunity to make MBBS = Medics Bound By Service (to all humanity).

In the universal record of 'good karma', the names of young aspiring doctors like you shall be etched in letters of gold, especially in the hearts of the ailing, their families and for generations to come stories of your heroic deeds shall be remembered with affection and respect. Your success at the end of this war will be your pride. The true reward of serving others is not what you get out of it. It's what you become as a result of that service - fulfilled, satisfied, proud and that "feel good factor" of having done something heroic and historic. We repeat, it's a privilege that all are not blessed with. You have the qualifications and the skills and as medics you are not just front-line soldiers you are healers of this ailing world.

सत्यमेव जयते

THE HIGH COURT  
OF GUJARAT

(VIKRAM NATH, CJ.)

(J. B. PARDIWALA, J.)

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M.A. SAIYED