

10	21-08-2020	The DME passed an Order asking Management students to register for Counselling pursuant to the Notification dated 23-07-2020
11	24-08-2020	The DME passed an Official Memorandum directing the RGUHS not to issue Credentials/Certificates of successful candidates of MD/MS/diploma courses for those who have appeared for the examination in July/August 2020.
12	24-08-2020	The Appellants, submitted objections to the 1 <sup>st</sup> Respondent, and raised several queries, answers regarding compliance with High court Orders and demanded data.
13	25-08-2020	The Appellants raised several queries, answers regarding compliance with High court Orders and demanded data.
14	25-08-2020	The Appellants raised several queries, answers regarding compliance with High court Orders and demanded data.
15	25-08-2020	The Appellants raised several queries, answers regarding compliance with High court Orders and demanded data.
16	29-08-2020	The Appellants withdrew their registration for counseling
17	02-09-2020	The DME issued date of commencement for counseling for only the Government seats students, and not to the Management students category.
18	05-09-2020	Further Notice regarding Counselling for government seats students
19	07-09-2020	Further Notice regarding Counselling for government seats students

## BRIEF FACTS

The Appellants herein who are all Post graduates degree and diploma holders falling under the Management category have challenged the Common Judgement dated 30-08-2019 passed by the Learned Judge in WP No.3645/2016 which is one of the several matters connected to WP 40566/2015 (Ms Bushra Abdul Aleem v. the State & ors) and connected matters. to the extent that it upholds Section 4 of the “Karnataka Compulsory Service Training by Candidates Completed Medical Course Act, 2012” as amended by Act 35 of 2017, and applies it to them, and not being parties in the earlier proceedings have preferred a separate application seeking leave to do so.

That the stand of the Government which is accepted by the Ld Judge is that the said impugned enactment has been necessitated to provide quality medical service to the Rural Areas.

That Section 3 of the Act envisaged that after completion of the MBBS course, the candidate has to undergo one year compulsory training in Govt Primary Health Centres of Government hospitals in *Rural areas*, as there is a substantial concentration of doctors in Urban areas

However, Section 4 of the Act envisaged that after completion of the PG course, the candidate has to undergo one year compulsory training in *Urban areas*.

Thus, the raison d'etre of the enactment is negated by Section 4, and this section is liable to be quashed.

Further, the Appellants have all secured seats under the Private, Management, NRI Quota and got admitted to various Medical Colleges paying huge tuition fee per year, ranging from Rs.6 Lakhs to Rs.75 Lakhs per year. The one year compulsory service was neither mentioned in the brochure

2017-18, nor were they made aware of the pending Writ Petitions nor about the stay of the enactment, nor was any affidavit or Bond taken from them, nor was any notice issued to them during the course of their prosecuting the PG degree and diploma courses. In fact their Brocure made a mention of compulsory service by the government seat students for 3 years, which actually becomes a reassurance that no compulsory service was required from the Management students. Hence they are not liable to be made amenable to the impugned enactment and they have to be exempted from its purview.

By Act No.35 of 2017, the “Karnataka Compulsory Service Training by Candidates Completed Medical Course Act. 2012” was amended and the words Trainee, Training and Embargo on conferment of Degree were omitted, but instead embargo on Registration was brought in.

Although this amendment exercise was undertaken pursuant to a hint by the Ld Judge while passing the Interim Order, that the offending provisons may be repugnant, the embargo on registration continued to be in violation of the Indian medical Council Act, and hence repugnancy continued, as the IMC Act was traceable to Entry 66 List I, and ousted the role of the state under Entry 25 List III. However, the Ld Judge sought to save the impugned enactment under Entry 26 of List III, and Entries 6 and 41 of List II, while calling the IMC Act and the impugned Act, as “ragbag acts”.

The Ld Judge wrongly granted legislative competence to the state on the subject of registration of the degree conferred which enables and leads to professional practice by bringing the impugned Act under the above three Entries, namely, Entry 26 of List III, and Entries 6 and 41 of List II,

That the amended provisions i.e. Sect 3(4), 4(2) and 5(2) which were also repugnant to Sections 15, 20, 21, 23,25, 26, and 27 of the IMC Act, were not sent for presidential Assent, more so considering the fact that state amended the offending provisions inspite of having obtained Presidential assent for the unamended Act. This was because, Article 254(2) does not enure to the benefit of the state to validate a law made by it in the Concurrent List, if the Law it offends is in the Union List, as is the case with the impugned Act Vs IMC Act i.e. Entry 25 List III Vs. Entry 66 List I.

The Ld Judge misread the judgements of Preeti Srivastava and Modern Dental College which clearly bring the IMC Act under the Ambit of Entry 66 List I only and all issues of conditions imposed by the state in the process of admission to the courses under Entry 25 List III. The Association Of Medical Super Speciality Aspirants Vs.UOI case also considered the Compulsory Service issue and the Bond issue entirely under Entry 66 List I and Entry 25 List III, while issuing a directive to the MCI and the Union to have a common legislation for the purpose of compulsory service through the country.

The Ld Judge misread the judgements of 1. Association Of Medical Super Speciality Aspirants Vs.UOI, 2. Dr Swamy Manjunath and 3.Dr.Varun, which only deal with government seats students with regard to subsidized education/fees/seats who were under an obligation under enactments and

Bonds to perform compulsory service and applied it to the Management category students, when there is not a whisper in the said judgements about Management category seats/students regarding compulsory service.

That the Ld Judge himself has passed the Order in Dr Swamy Manjunath case wherein he has passed structures and several directions to the state, upon the state admitting to have failed to implement the existing law against the government category students, and yet he has not accepted the classification/differentiation of the management category as a class to leave them out of the ambit of the impugned Act.

That the state government which has 3 year Bonds from the PG students is letting the government students go with just one year service while lamenting about the need for doctors in Rural areas, which affidavit was placed before the Ld Judge in the Dr Swamy Manjunath case, where the state restricted its right of three years to One year without any reason. This is a sign that the state actually does not need compulsory service. In fact the Ld Judge, despite knowledge of the restriction to just One year of compulsory service by the state in respect of Government seat students, has erroneous mentioned that the classification between Government and Management seat students is not permissible because the former have to do 3 years plus one year whereas the Management are being asked only One year of compulsory service.

In fact the reason why Management students were brought into for compulsory Service Training was because the state had originally camouflaged the compulsory service with the words Training, which is proposed to give, which was impermissible as MCI is the sole repository of that power, and therefore at that time it had to give the training to all the students irrespective of their source of entry, since some alone could not be given training and others left out. But once the fig leaf of training was amended, nothing remained to hold on to the Management students.

That the Ld Judge has extracted all judgements save the above five judgements, as the said judgements unable to buttress the view of the Ld Judge except for the statement of the Ld Judge that he found the ratio applicable.

That even after the pronouncement of the said Judgement the DME has not invoked the said impugned enactment against PG students of the Management category of the batch previous to the Appellants i.e. 2016-17 who passed out in August/Sept 2010 till date.

Hence on all the above grounds the impugned Judgement dated 30-08-2019 is liable to be set aside. The Appellants herein completed their post graduate medical course

The 1<sup>st</sup> Respondent issued a notification dated 23-07-2020, by which the 1<sup>st</sup> Respondent called upon all the PG students who have given their exams to render one year compulsory service in the government hospitals. The Appellants were taken by surprise as it invoked their services under the KCS Act while exercising powers under the Disaster Management Act. This compulsory service

was neither mentioned in the brochure 2017-18 nor was any notice issued to them during the course of their prosecuting the PG degree and diploma courses. All the Judgements state that once the students have taken an informed decision to take the seat and execute the Bond or have knowledge about the requirement for compulsory service they cannot renege on it, so as a logical corollary these Appellants who had no notice, are entitled to be exempted from the same.

The DME vide letter dated 03-08-2020 asked the Colleges to utilize the services of their PG students who had obtained admission under the Management/private/NRI quota in their own hospitals. The DME passed an Order dated 21-08-2020 asking Management students to register for Counselling pursuant to the Notification dated 23-07-2020

The Appellants, submitted objections to the 1<sup>st</sup> Respondent, and raised several queries, answers regarding compliance with High court Orders and demanded data vide letter dated 24-08-2020 and three dated 25-08-2020 which have not been replied to. The DME passed an Official Memorandum on 24-08-2020 directing the RGUHS not to issue Credentials/Certificates of successful candidates of MD/MS/diploma courses for those who have appeared for the examination in July/August 2020.

The Appellants withdrew their registration for counseling on 29-08-2020.

The DME on 02-09-2020 issued notice giving the date of commencement for counseling for only the Government seats students, and not to the Management students category (all Management seat students have not filed the petition nor have withdrawn their registration, except the Appellants), though the counseling is to be done on merits, and many Management students are higher in merit than the government seat students.

Further Notice dated 05-09-2020 and 07-09-2020 regarding Counselling for government seats students has been issued.

The Appellants make it clear that their challenge is with regard to their being brought into the ambit of the KCS Act. They have no issue with serving under the Disaster Management Act is invoked in accordance with law, de hors the KCS Act.

In the meanwhile the Appellants have preferred this Appeal.

**Advocate for the Appellants**

**Bangalore**

**Dated: 14-09-2020**