IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L) NO.12834 OF 2024
WITH
INTERIM APPLICATION (L) NO.19647 OF 2024

Suhas Hari Pingle .. Petitioner /Applicant

Versus

Union of India
Through its Ministry of Health and Family Welfare and Ors. .. Respondents

WITH
INTERIM APPLICATION (L) NO.22722 OF 2024
IN
PUBLIC INTEREST LITIGATION (L) NO.12834 OF 2024

Shrirang Limaye .. Applicant

Versus

Suhas Hari Pingle .. Respondent

WITH
INTERIM APPLICATION (L) NO.21621 OF 2024
IN
PUBLIC INTEREST LITIGATION (L) NO.12834 OF 2024

Yash Rajeev Junnarkar .. Applicant

Versus

Suhas Hari Pingle .. Respondent

WRIT PETITION NO. 2703 OF 2023

College of Physician and Surgeon .. Petitioner

Versus

State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION (L) NO. 29846 OF 2023
IN
WRIT PETITION NO.2703 OF 2023

Suhas Hari Pingle .. Applicant

Versus

College of Physician and Surgeon and Ors. .. Respondents

WITH
INTERIM APPLICATION (L) NO. 30718 OF 2023
IN
WRIT PETITION NO.2703 OF 2023

Ravi Nair .. Applicant

Versus

College of Physician and Surgeon and Ors. .. Respondents

WITH
WRIT PETITION (L) NO.24270 OF 2024
WITH
INTERIM APPLICATION (L) NO. 27072 OF 2024
IN
WRIT PETITION (L) NO.24270 OF 2024

College of Physician and Surgeon .. Petitioner/Applicant

Versus

Union of India, through Ministry of Health and Family Welfare .. Respondent

WITH
INTERIM APPLICATION (L) NO. 25530 OF 2024
IN
WRIT PETITION (L) NO.24270 OF 2024

Suhas Hari Pingle .. Applicant

Versus

College of Physician and Surgeon .. Respondent

WITH
WRIT PETITION (L) NO.24553 OF 2024

Dr. Yash Rajeev Junnarkar and anr .. Petitioners

Versus

Union of India .. Respondent

WITH
WRIT PETITION NO.2144 OF 2024

Shrirang Limaye .. Petitioner

Versus

State of Maharashtra
(Medical and Drugs Department) .. Respondent

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Mr. Rafique Dada, Senior Advocate a/w Mr. Zubair Dada, Mr.Chirag Dave, Mr. Rohan Gupta and Mr. Shubham Kalbere i/b Legasis Partners, for Petitioners in WP/2703/2023, WP(L)/24270/2024, and for Respondent No.5 in PIL(L)/12834/2024.

Mr. Ajinkya Kurdukar with Ms.Riddhi Wagle i/b. Mr. Vishal Shriyan, Advocate for the petitioner in WP(L) 24553 of 2024 and for Applicant in IA 21621 of 2024 in PIL (L)12834 of 2024.

Mr. L M. Thorat along with Ms. Pooja Thorat i/by Mr.M. V. Thorat, Advocate for the Petitioner in PIL (L.) 12834 OF 2024.

Mr. Rui Rodrigues, Mr.D.P. Singh, Advocates for Respondent No.1-UOI in PIL (L) 12834 of 2024.

Mrs. Shehnaz V. Bharucha, Advocate for Respondent No.1-UOI in WP(L) 24553 of 2024.

Mr. Ganesh Gole a/w. Mr. Viraj Shelatkar Advocates for Respondent No.2-NMC in PIL (L) 12834 of 2024 and WP(L) No.24270 of 2024 and WP(L.) 24553 OF 2024.

Dr. B.N. Saraf, AG a/w Ms. Jyoti Chavan, Addl. G.P. a/w. Ms.Pooja Patil, AGP and Mr. Jay Sanklecha "B" Panel Counsel for the State in IA(L.)19647 of 2024, IA(L)22722 of 2024, IA (L.)No.21621 of 2024, PIL(L) 12834 of 2024, W.P.2703 of 2023, IA(L) 29846 of 2023, IA(L) 30718 of 2023, WP 2144 of 2024, WP(L) 24270 of 2024, IA(L) 27072 of 2024 and WP(L)24553 of 2024.

Mr. Rahul Nerlekar, Advocate for Res. No. 3 in WP/2703/2023 and Respondent No.4- MMC in PIL (L.) No.12834 of 2024.

Mr. Vishwajeet Kapse and Mr. Sameer Bhalekar, Advocate for the Petitioner in W.P.2144 of 2024 and for the Applicant in IA (L) No.22722 of 2024.

Mr. Sunny Jain, Mr.Sanjay Pandey, Mr.Abhishek Kolge, Advocate for the Intervenor/Applicant in IA(L) 30718 of 2023 in WP 2703 of 2023.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON : 31st JANUARY, 2025
PRONOUNCED ON: 24th MARCH, 2025

JUDGMENT (Per Bharati Dangre, J)

1. Five Petitions filed before us, including one Public Interest Litigation, revolve around the Postgraduate/Diploma courses offered by the College of Physicians and Surgeons (hereinafter referred to as **"CPS"**), registered as a Society for the purpose of conferring medical degrees based on the lines of Royal College of Surgeons of England, in the year 1912, which was duly recognized by the extant statutes like Bombay Medical Act, 1912 and the Indian Medical Council Act, 1933.

With the passage of time and with the enactment of the statutes like the Indian Medical Council Act, 1956 (**'IMC Act of**

1956') as well as the Maharashtra Medical Council Act, 1965, (**'MMC Act of 1965'**) the postgraduate diploma courses offered by CPS faced tempestuous phase, as the courses were de-recognized, whereas on another occasion they were again restored with its parallel consideration by the Maharashtra Medical Council under MMC Act.

Upon the IMC Act of 1956, being repealed by the National Medical Commission Act (hereinafter referred to **'NMC Act'**) in the year 2019, the NMC raised serious uproar about running of the courses under the aegis of the CPS and distinct orders passed/notifications issued, gave an occasion to filing of two writ petitions, by the College of Physicians and Surgeons namely WP (L) No.2703 of 2023 and WP(L) No.24270 of 2024.

PIL (L) No.12834 of 2024 filed by Suhas Hari Pingle, raise a strong objection to continuation of the courses through CPS as it is claimed that running of the courses by CPS without being subjected to the regime of the Medical Council of India (for short 'MCI') and then the National Medical Commission, is threat to medical education and health of the nation at large.

Two Writ Petitions are filed by the Medical Colleges, which offer the postgraduate courses run by CPS in its hospital, whereas one Writ Petition is filed by two students, based on the legitimate expectation that the courses offered by CPS, since time immemorial deserve continuation, as it offer qualifications to various students, who are unable to secure admission in the postgraduate degree courses.

2. All the above Writ Petitions face opposition from distinct respondents, the major opposition from the Medical Council of

India (MCI) and the National Medical Commission (NMC) constituted under the NMC Act, 2019, the Union of India through Ministry of Health and Family Welfare, ('MOHFW') and the State of Maharashtra through Medical Education and Drugs Department, along with other respondents.

(A) – The Prelude

3. Before we come to the contentions raised in the petition, it is necessary for us to briefly out line the distinct timelines in the journey of College of Physicians and Surgeons till the filing of the petitions and the public interest litigation, so as to appreciate the rival contentions advanced before us.

(a) The historical background of the College of Physicians and Surgeons along with the courses offered by it and its journey from 1912 till 2023.

Sr.No.	Date	Particulars
1.	25.03.1912	The then Surgeon General Submitted a Scheme for establishment of CPS, which was approved by the then Government of Bombay Presidency wherein the CPS was directed to be incorporated as a Society under the Society Registration Act 1860
2.	04.03.1913	CPS was registered for the purpose of conferring medical degrees based on the lines of Royal College of Physicians and Surgeons of England.
3.	16.03.1916	The Indian Medical Degree Act, 1916 was enacted inter alia to regulate the grant of titles implying qualification in western medical science. Section 3 of The Indian Medical Degrees Act, 1916, inter alia provide right to confer degrees, diplomas, licenses, etc. by the authorities/entities as set out therein and in the Schedule to the said

		Act, CPS Bombay, found its place.
4.	12.10.1916	The Schedule to the Bombay Medical Act 1912 was amended to include the qualifications granted by the CPS.
5.	23.09.1933	Government of India enacted Indian Medical Council Act, 1933 to constitute Medical Council in India.
	02.10.1945	Pursuant to a notification, CPS is included in First Schedule of the Act (MCPS Diploma)
6.	30.12.1956	Government of India enacted Indian Medical Council Act, 1956. Post graduate medical qualifications of CPS was included in the First and Third Schedule of the said Act of 1956.
7.	25.11.1965	Maharashtra Medical Council Act, 1965 was enacted, which had previously received Presidential assent. The various post graduate medical qualifications of CPS were included to the Schedule at Entry No.1, 2 &3.
8.	19.09.1997	The Schedule to Maharashtra Medical Council Act, 1965 was amended and Entry No.19 was added to include 12 post graduate medical qualifications of CPS. Out of the aforesaid twelve courses, one FCPS (Dermatology) which formed the part of Schedule to IMC Act was added.
9.	02.12.2009	Ministry of Health and Family Welfare issued a notification to delete the post graduate medical qualifications of CPS
	03.02.2010	Corrigendum to notification dated 02.12.2009 by MOHFW
10.	03.02.2010	Directorate of Medical Education Research of State of Maharashtra requested for inclusion of 11 additional post graduate medical qualifications of CPS in the Schedule of Maharashtra Medical Council Act, 1965

	16.02.2010	MMC by a letter to MEDD recommended inclusion of 11 courses to the Schedule to Maharashtra Medical Council Act, 1965
11.	12.03.2010	Government of Maharashtra issued a notification to amend the Schedule and Entry No.27 was added thereto. Three diploma courses and three FCPS courses which formed the part of the Schedule to IMC Act were added.
12.	05.08.2016	MOHFW by an order constituted a three member committee under the Chairmanship of Dr. Devi Shetty (f*ormer member of Board of Governors of erstwhile Medical Council of India*) and one Dr. Pravin Shingare, (*Director of Medical Education, Maharashtra*) and one Dr. Sita Naik, (*Former member of Board of Governors of erstwhile Medical Council of India and former Dean, SGPGIMS Lucknow*) to examine the curriculum of the course of CPS, its affiliation process its methodology of enrollment, etc.
13.		After conducting an enquiry, Devi Shetty Committee submitted a report to MOHFW inter alia stating that the standard/curriculum of CPS are on par with Medical Council of India.
14.	12.04.2017	Under the Chairmanship of Secretary of MOHFW in presence of the President of Medical Council of India and Chairman of Academic Committee of Medical Council of India, the report of Devi Shetty Committee was tabled and inter alia it was agreed in the meeting that 39 Post Graduate Diploma courses shall be added to the Schedule to Indian Medical Council Act, 1956 on the condition set out in the minutes of the meeting signed by President of MCI and Chairman of Academic Committee of MCI.

15.	17.10.2017	In view of what transpired in the meeting held on 12.04.2017, Government of India through MOHFW issued a notification to include 39 Post Graduate Diploma courses. 21 posts Graduate Diploma courses formed part of Schedule to MMC Act, 1965 and the balance 18 Post Graduate Diploma courses were newly added courses.
15.	27.11.2017	The President of MCI addressed a letter to Secretary, MOHFW, contending contrary to the minutes dated 12.04.2017 and requested to withdraw the notification dated 17.10.2017.
16.	17.01.2018	MOHFW by an order constituted a Hand Holding Committee under the Chairmanship of Dr. B.D. Athani *(Director General, Directorate of General Health Services, Ministry of Health and Family Welfare, i.e., of MOHFW)* along with other members.
17.	22.01.2018	Government of India through MOHFW withdrew the earlier notification dated 17.10.2017 and restored the postgraduate medical qualifications which were part of First Schedule of IMC Act, 1956, as on 02.12.2009.
18.	17.01.2019	Athani committee submitted report recording that curriculum of the diploma courses run by CPS were well defined and comparable with that of curriculum of MCI. It recommended recognition of 14 diploma courses along with the reasons granting such recognition and as agreed, the CPS appointed four members from the government department on its council.
19.	25.03.2021	CPS requested the MOHFW to conduct centralised counselling process for admission to the courses of CPS.

20.	24.05.2021	MOHFW directed the respective State Govt. and Union Territories to conduct counselling for admission to the courses offered by CPS.

4. The courses run through CPS are offered at two levels; the first being on inclusion of these courses in Schedule I and III of IMC Act 1956, and secondly on its inclusion in the Schedule appended to the MMC Act of 1965. The courses received recognition in the Act of 1965, taking into consideration its inclusion in the Act of 1956, however, it faced action of derecognition of its courses at both levels and this resulted in filing of the two writ petitions by CPS.

(b) Admissions to CPS courses --
The Background of the Petitions for consideration

(i) Writ Petition No. 2703/2023 – the First Petition filed by CPS.

5. In the above background, CPS initiated the process of admission on the basis NEET score/ranking and on persuasion with the Union of India, on 24/05/2021, MOHFW directed the State Government and the Union territory to conduct the counseling for admission to the courses offered by CPS.

As far as State of Maharashtra is concerned, the counseling for admission of the academic year 2021-22 was conducted on the basis of information brochure for NEETPG-CPS-2021 approved by the Commissionerate of Health Services Mumbai and the Process was completed in November, 2022.

6. As far as the academic session 2022-23 is concerned, the NEET results were declared on 1/06/2022, and the admission process for the MD/MS was completed by 14/01/2023, but the

admission process for the courses offered by the CPS was not initiated and therefore, CPS addressed communication to the MOHFW, seeking initiation of the admission process and MOHFW vide its letter dated 13/01/2023, addressed to the Medical Education and Drugs Department of the State of Maharashtra requested to conduct counseling for admission for the academic year 2022-2023. On 15th January 2023, a Committee was constituted by State Government for conduct of counselling. However, on 23/01/2023, the State Government expressed its concern in regards to the courses run by CPS in standalone hospitals without any specific permission from the State and with reference to the inspection conducted by the MMC, which are noted severe deficiencies in terms of infrastructure and faculty, which was found to be in violation of the Minimum Standard Requirement of the National Medical Commission, it was indicated that admitting students to such institutions would be detrimental to their career and for the health system in general. A guidance was therefore sought from MOHFW. This prompted the State Government to issue a communication to the CPS calling for information about the course details of the seats offered in Government/Private Institutions as well as the details of the permission obtained by the private institutions, and also the MOU signed with private institutions along with the list of recognised teachers.

CPS responded by its communication dated 06/02/2023, stating that no permission is warranted by it in the wake of it's background and for the fact that it is a examining and affiliating body. It clarified that no question of permission

arose in past 111 years and though it was denied that there was any signed MOU between CPS and Private institutions, a list of recognised teachers Institute wise was forwarded along with the list of honoured institutions as well as the aided institutions in which the courses were run. This included over 150 Private institutions and around 50 aided institutions.

In the meantime, the Commissioner of Health Services Public Health Department Maharashtra, which was concerned with 48 seats published an information bulletin for registration, document verification, preference form in relation to the admission process for the academic year 2022-23 and the first allotment list was published on 21/03/2023.

7. The Secretary, Medical Education and Drugs Department caused the Maharashtra Medical Council to carry out inspection of the institutes affiliated to CPS and being unaware of the actual inspection carried out in these institutions, CPS filed an application under Right to Information Act, 2005 on 27/02/2023, calling upon the MMC/the State, to provide the necessary inspection reports and when the said information was refused to provide the documents and appeal was filed.

8. On 14/03/2023, the Medical Education and Drugs Department of State of Maharashtra, invited its attention to the errors/defects in the institutions implementing the CPS courses, with reference to the inspection being carried out in 120 private institutions/hospitals conducting the course. Informing that a report has been submitted to the government which had highlighted the serious deficiencies affecting the academic performance and future of the students enrolled in CPS, the power under section 28 (2) of the MMC Act, 1965,

was invoked seeking an explanation as to why CPS courses included in the schedule of the Maharashtra Medical Council Act, 1965 should not be removed. It was also indicated that if the disclosure/explanation is not furnished, it shall be liable for appropriate action.

On 28/03/2023, a detail response was submitted to the show cause notice highlighting the statutory provisions pertaining to CPS and reference was also made to the report of the committees appointed by Government of India, justifying its existence and a request was made to withdraw the show cause notice and forthwith initiate process of admission to the postgraduate courses of CPS in the interest of over 1000 candidates.

9. Since the requisite documents sought from the MMC were not furnished, CPS filed Writ Petition No.1214 of 2023, raising a challenge to the jurisdiction of the Medical Education and Drugs Department to initiate the purported inquiry under the provisions of Section 28 (2) of the Act on the ground that it was initiated on the recommendation of the Administrator who was not the 'Council' and hence the show cause notice was issued in absence of recommendation of the expert body.

The Writ Petition was disposed off by this Court on 25/04/2023 by observing that since the show cause notice dated 14/03/2023 was assailed, there was no cause for interference as it was open for CPS to show cause to the notice.

10. On 5/04/2023, the petitioner was served a communication under the signature of Secretary Medical Education and Drugs Department, reporting the discrepancies

in implementation of the CPS courses, with reference to the information sought and in the wake of the issues raised in the report submitted by the MMC on 20/01/2023, and 10/03/2023, and with reference to the explanation offered, representative of CPS was directed to remain present for hearing schedule on 12/04/2023.

11. Pursuant to the notice being issued, hearing was scheduled on 16/05/2023, in respect of the show cause notice dated 14/03/2023, and CPS placed voluminous documents while assailing the show cause notice and also raising challenge to the exercise of power under Section 28(2) of the NMC Act. The hearing was adjourned from time to time and on 20/05/2023, the petitioner furnished the data in regards the remaining 73 institutes/hospitals communicating their willingness to be inspected by respondent no.2 and also provided indemnity bonds exhibited by the 76 institutes/hospitals. In the hearing scheduled, the advocate for the petitioners furnished detail explanation as regards to its stand adopted for commencing the counseling the process for the year 2022-2023.

On 13/07/2023, the petitioner was communicated with an order purportedly passed under Section 28(2) of the Maharashtra Medical Council Act, thereby deleting the Educational qualifications specified under Item 1, 2, 3, 19, 27 in the schedule of the Act, on reaching a conclusion that the government is competent to remove any qualification from the schedule or to impose such conditions as it deem fit, and report of the Council shows that CPS has failed to maintain

adequate standard of qualification. This was followed by a notification of the State Government published on 14/7/2023.

It is this action of the State of Maharashtra, which is assailed in the Writ Petition No.2703/2023, in the backdrop of the recommendations of the Maharashtra Medical Council dated 3/07/2023. A writ of mandamus is prayed for directing the respondents not to act on the basis of the impugned order dated 13/07/2023 passed by the State of Maharashtra as also the notification dated 14/07/2023, and to proceed with the Central Counseling process for admission for the academic year 2022-2023.

12. It is worth to note that by order dated 15/03/2024, the Medical Education and Drugs Department through its Principal Secretary amended the schedule of Maharashtra Medical Council Act, 1965 to include 10 courses of CPS, from the date of its publication in the official gazette and this include 3 diploma courses- DGO- DPB- DCH, 6 fellowship courses- FCPS (Med), FCPS (Path.), FCPS (Surgery), FCPS (Derm), FCPS (Mid. and Gyn.) and FCPS (Opth) and Membership of College of Physicians and Surgeons (MCPS).

(ii) Writ Petition (L) No. 24270 of 2024 – Second Petition filed by CPS.

13. On restoration of the ten courses in the Schedule to the MMC Act by the State Government on 15/3/2024, the petitioner by letter dated 18/03/2024, forwarded a request to the Secretary Medical Education and Drug Department for the 10 overlapping courses with the schedule of the IMC Act, 1956,

which were restored, claiming that the admissions in State of Gujarat had already taken place for the year 2022 and 2023, but the admissions in Maharashtra could not take place although admissions for the academic year 2021-22, was completed in February, 2023. The petitioners insisted for starting of the counseling process for the ten courses, but was informed that the Government of Maharashtra had approached the Union of India, in relation to its courses and therefore, no decision was communicated.

14. On consistent follow up by the CPS with respondent no.3, a communication was issued to the Commissioner Medical Education and Research on 21/06/2024, to commence the counselling process, after lapse of code of conduct which was in force till 4/07/2024, and accordingly a schedule of admission was published on 26/6/2024, by the Medical Education and Drugs Department.

In the meantime, in the Public Interest Litigation (L) No. 12834 of 2024, filed by Dr. Suhas Hari Pingle, an Interim Application No.19647 of 2024, seeking stay of the schedule of admission dated 26/06/2024, was filed.

During the hearing of the Writ Petition filed by CPS along with the PIL, on 19/07/2024, the counsel representing NMC produced a letter dated 5/07/2024, addressed by PGMEB to the Commissioner and Competent Authority of the Government of Maharashtra by relying upon the above decision and stating that there can be no admission after the last date of joining and since the last date of joining for the academic year 2023 was 30/11/2023, the orders passed by

the Apex Court shall be scrupulously adhered to. During the hearing, another letter addressed by the NMC to the MOHFW was also produced on record apprising it of the above decision, and informing it that it has come to its notice that the Government of Maharashtra is proposing counseling for admission for the academic year 2023 in hospitals/institutions running courses under the Umbrella of CPS and this was in clear violation of the directives of the Hon'ble Apex Court, as the last date for joining for the academic year 2023 was 30/11/2023.

On 19/07/2024, Government of India restrained State of Maharashtra from conducting admission to CPS courses for 2023, thus, drawing curtains on the admission to CPS courses for academic session 2022-2023.

15. During the hearing scheduled on 24/07/2024, a communication from the Government of India addressed to the Medical Education and Drugs Department of Government of Maharashtra, was produced wherein a specific stand was adopted, with reference to the letter addressed by it to the MOHFW, regarding feasibility to commence the counseling process for admission in 10 recognized courses of CPS, which were included in the schedule of MMC Act, 1965 based upon NEETPG - 2023 score and the Ministry communicated its considered view as below:-

> *"3.1 The power to give license to institute/hospitals other than those listed in schedule of NMC Act, 2019 to start a course of recognized qualification rests with NMC. Accordingly, there cannot be any exemption for CPS from the statutory provisions of NMC Act, 2019 enacted by the Parliament.*

3.2 As per Section 10A of erstwhile IMC Act, 1956 & Section 28 of NMC Act, 2019, no person shall establish a new medical college or start any PG course without previous permission of Central Government and EMRB of NMC respectively. As informed by erstwhile MCI vide letter dated 02.11.2017, no such permission was given to CPS.

3.3 Indian Medical Degrees Act, 1916, which empowers CPS to grant degrees, has been repealed by Repealing and Amending Act, 2016 (23 of 2016).

3.4 Upon repealing of Indian Medical Degree Act, 1956, Cps has lost its validity to confer the degree. Therefore, as on date, no course run by CPS, Mumbai should be recognized for the purpose of NMC Act, 2019 w.e.f. 09.05.2016."

16. When the petition was listed before this Court on 22/08/2024, it was brought to our notice that NMC had uploaded certain information on its website under the caption 'list of closed colleges/institutions with courses' which contained a remark 'course discontinued as per decision' taken in PGMEB meeting held on 16/07/2024, and the minutes of the meeting were produced before us. In wake of the above, liberty was granted to the petitioner to amend the petition so as to raise challenge to the recommendations contained in the said minutes of meeting and this Court also directed NMC to notify the declaration on its website, in relation to the 10 courses run by the petitioner so that public at large including the students are not mislead. Pursuant thereto, the petition was extensively amended raising a challenge to the minutes of meeting dated 16/07/2024.

17. Once again the petition was listed on 4/09/2024, when the compilation of document of NMC was brought on record, which included minutes of meeting of PGMEB of the NMC, when a decision was taken in purported exercise of power under clause (G) of sub-regulation (ii) of Regulation 8 of the

Maintenance of Standards of Medical Education Regulations, 2023 (hereinafter referred to as MSMER).

In the wake of the said decision, once again petitioner was granted permission to raise a challenge to it and the petition is amended by raising a challenge to the minutes of the meeting dated 29/08/2014 as well as the minutes of the meeting dated 16/07/2024, to which a reference was made in the minutes of the PGMEB meeting, under which show cause notice was issued to CPS, to show cause as to why action under regulation 6(6) of Postgraduate Medical Education Regulations 2000 shall not be taken.

The show cause notice dated 14/06/2024 made reference to 3 Postgraduate diploma courses and it is a contention of the petitioner that the final order ought to have been restricted only to these three courses. By an exhaustive amendment, challenge is raised to the said decision taken by the respondent no.2, the National Medical Commission.

18. In compliance of the direction issued by this Court on 22/08/2024, the respondent no.2, the NMC by a letter dated 30/08/2024, communicated to all the Directors/principals/ Deans and HODs as well as all medical Colleges/Institutions under NMC as regards the “Discontinuation of all courses running under the umbrella of Colleges of Physicians and Surgeons (CPS) Mumbai”. It is this communication which is assailed in the second Petition filed by CPS on being aggrieved by the entire decision making process of the NMC in de-recognizing the courses run by it as an ‘Institution’.

(iii) PUBLIC INTEREST LITIGATION (L) NO.12834 OF 2024

19. Dr. Suhas Hari Pingle, practicing with MBBS degree conferred on him in the year 1975 by Mumbai University, with a focus on improving the quality of medical education and health services and also the President of Indian Medical Association (**"IMC"**) in the year 2021 and a member of Maharashtra Medical Council (**"MMC"**) for considerable length of time, has filed the present petition, seeking distinct reliefs.

According to the petitioner, in the background that he was deputed by MMC to visit the examination hall, where the annual examination of postgraduate students used to be conducted by CPS, he prayed for the record to be made available to him with regard to the strength of the students, but no such data was provided to him. In the year 2015, as directed by MMC, when he visited CPS as 'Observer' for evaluation of OMR sheets, he was informed that no observer from MMC will be allowed to observe the evaluation of OMR sheets, and he accordingly, submitted his report to the MMC.

The MMC, therefore, recommended to the State of Maharashtra for deletion of CPS qualifications from the Schedule, but despite the recommendation, no steps were taken for deletion of the courses.

20. In the year 2009, a Public Interest Litigation was filed by Dr.Arun Date against the CPS for de-recognition of its courses and the Petitioner kept a close watch on the proceedings. In fact, the Petitioner was also desirous of joining himself in the PIL, but on technical ground and in order to avoid the delay, he could not be impleaded.

According to him, the PIL had addressed two important points, namely, Union of India recognised few courses of CPS by inserting them in the Schedule of the IMC Act, 1956. However, CPS conducts two types of courses; those are allegedly recognised by Union of India/IMC and other group of courses, for which no application was ever made by CPS either to MCI or to Union of India for inclusion of those courses in Schedule of IMC Act, 1956.

Though in the PIL, the petitioner attempt to highlight the manner in which CPS is conducting unrecognized courses and putting the students' career in jeopardy, apart from the allegation that the medical education system is at stake.

21. The Petitioner claims to have carried out a thorough research regarding the Regulations framed under the IMC Act, 1956 as well as under the NMC Act, 2019 and he reached a conclusion that CPS is illegally conducting postgraduate medical courses by admitting the students in small clinics and/or hospitals, which lack the necessary infrastructure for imparting the education in post-graduation studies.

The Petitioner therefore, intend to prevent the College of Physicians and Surgeons, Mumbai from affiliating and/or permitting the private/Government hospitals and clinics from admitting students for conferment of postgraduate diploma or FCPS courses for the purpose of practicing allopathic medicine in the State of Maharashtra.

The Petition also seek a direction to prevent CPS from conducting annual examination of medical diploma and FCPS courses for conferment of qualification for making them eligible to practice allopathic system of medicine in the State of

Maharashtra. The PIL has also raised a challenge to inclusion of ten (10) diplomas in the Schedule to the IMC Act by Notification issued in the year 2018.

22. It is the case set out in the Petition that the Ministry of Health Government of India recognised nine (9) courses; three diploma and six fellowship courses and on the enactment of the Indian Medical Council Act, 1933, these courses came to be included in the first Schedule. When the Indian Medical Council Act, 1956 was enacted, the said courses were erroneously included under it. According to the Petitioner, the courses recognised and appearing under Schedule to IMC Act, 1956 were in relation to the students admitted only in five colleges; (1) Grant Medical College, Bombay, (2) Seth G.S.Medical College, Bombay, (3) T.N.Medical College, Bombay (4) B.J.Medical College Poona and (5) B.J.Medical College, Ahmedabad.

Relying upon Section 11 of the IMC Act, 1956, it is the specific case of the Petitioner that perusal of the said provision would reveal that the medical qualifications granted by universities or medical institutions in India, which are included in the first Schedule shall be the recognised medical qualifications and if the qualification of any university or medical institution is not included, such university or medical institution is permitted to apply to have such qualification recognised and included in the Schedule to the IMC Act, 1956. In view of Section 11, even prior to the amendment and after 1993, when Section 10 was amended, by inserting Sections 10-A to 10-D, the qualification appearing in the Schedule to the

IMC Act, 1956 is restricted only qua a particular college of particular university, which were recognised by Medical Council of India or Government of India. According to the Petitioner, every new college established was required to apply for inclusion of it's qualification in the Schedule of the Act, and in view of the scheme of the IMC Act, 1956, the recognition granted to nine (9) postgraduate courses run by CPS was restricted to five colleges and, therefore, CPS was not allowed to admit any student in any other college or institution and/or hospital.

However, according to the petitioner, the CPS, by taking undue advantage of recognition of it's courses in the five colleges, started affiliating and/or approving certain hospitals, without assessing their infrastructure, for admitting the students in the nine recognised courses and though initially, it approved few hospitals, slowly it started expanding its network for conducing the courses illegally. According to the Petitioner, as on 13/07/2023, the CPS is illegally admitting students for these nine courses in more than 100 hospitals. It is also alleged that, apart from the nine courses, which find place in the Schedule of IMC Act, 1956, the CPS started 36 other postgraduate courses, which never received recognition from Central Governing nor had it applied to the MCI before starting these new courses and hence the courses are unrecognised.

23. The PIL Petition in great detail has set out the scheme governing the medical education covered by Entry 66 List 1 of Schedule VII of the Constitution of India and it has highlighted

the provisions of the IMC Act as well as the MMC Act, which has recognised certain qualifications for registration of the doctors in the State of Maharashtra. It has also focused its attention on Section 28 of the MMC Act, 1965 and a challenge is raised to the said provision on the ground that the State Legislature is not empowered to enact the said provision, since the subject does not fall within its purview, as it is a subject governed by List 1, and only Parliament is competent to make law.

24. In this background, the Public Interest Litigation, seek the following reliefs :-

> "(a) quash and set aside Notifications dtd 17.10.2017 and 22.1.2018.
>
> (b) quash and set aside Notification dated 15.3.2024.
>
> (c) quash and set aside section 28 of Maharashtra Medical Council Act 1965.
>
> (d) hold and declare that section 28 is ultra-vires the Indian Medical Council Act 1956 and National Medical Commission Act 2019.
>
> (e) direct the Respondent no.5 not to admit any student to any postgraduate diploma or degree courses without taking prior permission from National Medical Commission.
>
> (f) restrain the Respondent no.5 from affiliating and/or approving any hospital or clinic for pursuing/conducting CPS diploma or degree courses.
>
> (g) restrain the Respondent College of Physician & Surgeons from conducting any examination and/or conferring any diploma or degree certificate on any student admitted in any affiliated and/or approved hospitals.

In addition, the PIL also seek certain interim measures, which include stay to the effect and/or implementation to the Notifications which are under challenge, and also stay to the execution and/or implementation of Section 28 of the Maharashtra Medical Council Act, 1965. Another interim

relief sought in the PIL litigation is a direction to CPS not to admit any students to any postgraduate diploma or degree courses, without taking prior permission from NMC and restrain it from affiliating and/or approving any hospital or clinic for pursuing/conducting CPS diploma or fellowship course.

(iv) Petition filed by Medical Colleges (Writ Petition No.2144 of 2024 -Shrirang Limaye & Ors. Vs. State of Maharashtra & Ors.)

The four petitioners, Doctors by profession, who run hospitals which offer CPS diplomas, raise a challenge to the order dated 13/07/2023, passed by the State Government through Medical Education and Drugs Department and the subsequent Notification dated 14/07/2023, thereby deleting the courses run by CPS, which found place at Item 1, 2, 3, 19 and 27 of the Schedule of the MMC Act, 1965. This also included ten courses which form part of First Schedule of the IMC Act. The challenge of the petitioners is to the effect that CPS courses are run according to the norms and, since, they cater to the need of those, who cannot secure admission in the postgraduate courses recognised by MCI or run by NBE, it provides a good gateway for securing higher qualifications.

(v) Petition filed by students- Writ Petition (L) No.24553 of 2024 (Dr.Yash Rajeev Junnarkar & Anr. Vs. Union of India)

The petition filed by the two petitioners, having completed their MBBS course, raise a challenge to the decision taken by the Ministry of Health and Family Welfare, Delhi on recommendation of the National Medical Commissioner dated

19/07/2024 as well as to the public notice, discontinuing the courses run by CPS. As a student, the petitioners were aspiring to secure admission in the CPS courses and, since, their right is defeated, they have questioned the impugned letters/decisions.

(B) Arguments Advanced by Rival Contenders

(i) Submissions advanced on behalf of CPS

25. Learned senior counsel Mr.Rafique Dada, representing CPS in the two Writ Petitions filed by it, has relied upon the list of dates and events, spread over a period from 1912 till the year 2024 and he would divide the challenge into two compartments.

Writ Petition No.2703 of 2023 raising challenge to the order dated 13/07/2023 passed by the Secretary, Medical Education and Drugs Department to be followed by the Notification dated 14/07/2023, issued in exercise of power under the Act of 1965, directing removal of 26 qualifications from the Act of 1965, the qualifications being listed at Entry 1, Entry 2, Entry 3, Entry 19 and Entry 27.

Mr.Dada would urge that the Maharashtra Medical Council Act, 1965 was enacted by invoking Entry 11 of List II of the Constitution of India and, therefore, is perfectly within the legislative competence of the State Legislature and it had received the assent of the President of India on 26/11/1965. He would submit that though the Act was enacted by invoking Entry 11 of List II, the said entry was deleted by amendment to the Constitution in the year 1976 and Entry 25 of List III was inserted, which provided for “Education including technical education, medical education and universities,

subject to the provisions of entries 63, 64, 65 and 66 of List I vocational and technical training of labour".

Contesting challenge to the constitutional validity of Section 28 of the Maharashtra Medical Council Act in the Public Interest Litigation, Mr.Dada has urged that the challenge is hopelessly belated as Section 28 has been in force over a period of 60 years and the challenge deserve a dismissal, as it suffers from unexplained delay and laches and in fact, thousands of doctors, who have availed qualifications under the umberage of Section 28, are going to be gravely prejudiced. According to him, the State of Maharashtra, by order dated 15/03/2024, has introduced the courses run by the CPS back into the Schedule, which were earlier deleted. He would submit that MMC Act in its Schedule at Entries 1, 2 and 3 included the three courses of the Petitioners from the time the Act was brought into the force. Under Entry 19, which was added in the Schedule to the said Act, 12 courses were added on 19/09/1997 and on 12/03/2010, by adding Entry No.17, 11 more courses were added, after some of these courses were deleted from the IMC Act, 1956 by Notification dated 02/12/2009.

Mr. Dada has called in question the locus of the petitioner in the Public Interest Litigation, to challenge the vires of Section 28 of the Maharashtra Medical Council, by also submitting that the PIL Petitioner himself was a member of the Maharashtra Medical Council and, therefore, he ought to have knowledge about the courses being inserted in the Schedule to the MMC Act and also about its deletion, but all the while, he kept mum and despite being aware of the exercise of the power

under Section 28, failed to raise any challenge at any point of time. As regards the interpretation of Entry 66 of List 1, reliance is placed upon the decision of the Apex Court in the case of ***Baharul Islam & Ors. Vs. Indian Medical Association & Ors.***[1], where the Constitutional validity of the Assam Rural Health Regulatory Authority Act, 2004 was questioned and an argument was advanced on behalf of the Medical Council of India that the IMC Act, 1956 is relatable to Entry 66 of List 1 of the Seventh Schedule to the Constitution and it was urged that that it was an exhaustive legislation covering all aspects of opening of new or higher courses of medicines, teaching and training, recognition of medical qualification and registration of medical practitioners. According to him, the argument was not accepted by the Hon'ble Supreme Court as Entry 66 of List 1 was interpreted as a specific entry, having limited and specific scope, dealing with coordination and determination of standards in institutions of higher education or research as well as scientific and technical institutions. According to him, it was concluded that coordination and determination of standards in medical education was achieved by the Parliament by enacting Indian Medical Council Act, 1956 and by recording that Assam Act was later Act and issue arose whether it violated Section 10A of the Indian Medical Council Act, 1956, the Assam Act was held to be ultra vires.

26. Highlighting the existence of CPS since its establishment in the year 1912, being registered as a society, for conferring medical degrees based on the lines of Royal College of Surgeons of England, Mr.Dada would submit that the power and

1 2023 SCC OnLine 79

authority was given to it to confer degrees read with the Schedule captioned as, 'Right to Confer Degree' under Section 3 of the Indian Medical Degrees Act, 1916 and the right to confer degrees included the right of conferring, granting or issuing in the States degrees/diplomas/licenses/certificates or other documents stating or implying that the holder, grantee or recipient is qualified to practice western medical science. According to him, this right received a recognition in the Schedule to the IMC Act, which included every university established by Central Act, the State Medical Faculty in Bengal, the College of Physicians and Surgeons of Bombay and the Board of Examiners Medical College, Madras. According to him, though the Indian Medical Degrees Act, 1916 was repealed on 09/05/2016, by Repealing and Amending Act, 2016, by virtue of Saving Clause, the right to confer degrees is saved and remain intact. He would also place reliance upon Section 6(c) of the General Clauses Act, 1897, providing that repeal of an Act shall not affect any subsisting rights granted by the Repealed Act and, therefore, according to him, CPS retained its right to confer degrees.

27. Mr.Dada would submit that only on 02/12/2009, the courses of the Petitioner were removed from the First Schedule of IMC Act, 1956, but the Government of Maharashtra, keeping in mind the increasing need for postgraduate doctors in the rural areas of State of Maharashtra, included these courses to Schedule appended to the MMC Act, 1965 alongwith other courses, after examining the curriculum pattern of examination and on

recommendation of the Maharashtra Medical Council in the year 2010, by virtue of Entry No.27.

According to him, the courses in Schedule I and III of the IMC Act, 1956 remained deleted, till 39 postgraduate diploma courses offered by CPS were re-introduced, by virtue of a Notification dated 17/10/2017 issued in exercise of power under Section 11(2). According to him, it is in the background of the recommendation of the Committee headed by Dr.Devi Shetty, who was part of Board of Governors MCI, appointed by MOHFW, the Notification was issued. The Committee, according to Mr.Dada, has undertaken a detailed examination of the courses offered by the petitioners, the affiliation process, the existing MSR and recommended restoration of the courses. The report submitted by the Committee was finally accepted by MOHFW, which was attended by the President of MCI as well as the President Academic Committee of MCI. Not only this, MOHFW constituted another Committee in the year 2018, the Athani Committee, which also examined various aspects of the courses offered by the CPS.

28. In the interregnum, the Ministry of Health and Family Welfare modified its Notification dated 17/10/2017 and retained the ten courses offered by the CPS in the Schedule, which included six diplomas, six fellowships and one Membership of College of Physicians and Surgeons and what is important according to Mr.Dada is that these courses were restored with retrospective effect from December 2009.

Taking us through the time-lines, Mr.Dada has urged that on 08/08/2019, the Indian Medical Council Act, 1956 was repealed and replaced by the National Medical Commission

Act, 2019, although sub-section (8) of Section 35 recognised all qualifications included in First and Second Schedule of the IMC Act, 1956 as recognised for the purpose of the new Act. According to him, the provision has to be read with Section 60(4) of Repeal and Saving Clause of the Act, 2019, which saved the qualifications of CPS.

The recognition of the courses recognised under the Act of 1956 run by the Petitioners were simultaneously run alongwith 26 courses, which were recognized under the MMC Act, 1956.

29. Mr.Dada has then taken us through the show cause notice issued by the State Medical Council, asking CPS to show cause, as to why 26 courses included in the Schedule of the Maharashtra Medical Council Act, 1965 shall not be deleted in exercise of power under Section 28(2) of the said Act. The show cause notice, according to him, made a reference to a visit by an inspection team appointed by the MMC, which had visited 120 private institutions/hospitals and the show cause notice reflected that the shortcomings in the report are very serious and the deficiencies are affecting the academic performance and future of the students, which would ultimately impact the health system of the State. The show cause notice also afforded an opportunity to the Petitioners to show cause, though it is the argument of Mr.Dada that neither the copy of the report or surrounding documents were furnished to his client nor an opportunity was given to cure the deficiency and, therefore, the whole exercise undertaken by the MMC was in clear violation of natural justice and tenets of fair play.

In addition, it is also submitted by him that the MMC was under the control of the sole administrator appointed by the State of Maharashtra under Section 31 of the Act of 1965 and she was the representative and employee of the Government of Maharashtra working under Secretary, MEDD, Government of Maharashtra, who has passed the impugned order dated 13/07/2023 and, in fact, there was no free, fair and effective consultation in the eyes of law.

30. Submitting his arguments in support of another Writ Petition, which has raised a challenge to the action of the National Medical Commission, in issuing the show cause notice on 14/06/2024, issued by Post Graduate Medical Education Board (**'PGMEB'**), Mr.Dada has taken us through the sequence of events, which include various orders passed by this Court and he would submit that it is during the hearing of the Petition before the Court, raising a challenge to the show cause notice issued on 14/06/2024 in relation to the three diploma courses (DCH, DGO and DPB), out of the ten courses recognised by NMC, a communication dated 05/07/2024 addressed to the Union of India by the NMC was produced and challenge was raised to the said communication. According to him, the proceedings made reference to the purported decision of PGMEB taken in its meeting dated 16/07/2024, taking a decision to derecognise the courses run by CPS and this decision is subject to serious criticism by Mr.Dada, since according to him, it not only violates the principle of natural justice, but also defeats sensibility, since the show cause notice restricted itself only to three courses, but the decision is taken by PGMEB, that the courses run by CPS were not compliant

with the procedure prescribed in Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as 'PGMER') and Maintenance of Minimum Standard of Medical Education, 2023 (hereinafter referred to as 'MMSME'). According to him, the authorities were under total misconception in arriving at a conclusion that the courses run by CPS deserve timely renewal, as he would submit that in regard to the courses run by CPS, which were already in existence prior to 1993 amendments, the Regulations of 2000 are only applicable for starting of new post graduate medial courses and the provision for renewal is only applicable to those institutions, which intend to start a post graduate medical institution.

In addition, the order dated 16/07/2024, according to Mr.Dada, is ex-parte order and, therefore, it cannot definitely sustain and in any case, it is merely a recommendation made by the PGMEB to the National Medical Commission, but no decision is taken by it. It is the argument advanced on behalf of the CPS that PGMEB purported to pass another decision, minutes whereof are dated 29/08/2024 and it refers to the decision dated 16/07/2024 and also to the observations of this Court dated 22/08/2024.

According to Mr.Dada, stoppage of admissions appears to be a part of penalty under the Maintenance of Medical Standard Regulations, 2023 and, since, the decision is taken without hearing, as contemplated in proviso to Regulation 8 of the Maintenance of Medical Standard Regulations, 2023, the order cannot be sustained.

31. It is specifically argued by Mr.Dada that whatever action is taken against CPS by MMC or PGMEB is one sided, as no notice was issued to the Hospitals in which the courses were run and he has also submitted that the deficiencies were found in some hospitals, but all the hospitals are painted with the same brush and the reports of thirty-eight hospitals were never received by the College of Physicians and Surgeons.

It is also the submission of Mr. Dada that the reports of inspection would clearly reveal that some of the hospitals were compliant with the norms of CPS, and if at all, there were some flaws, opportunity ought to have been given to the colleges to rectify the discrepancies, but this was intentionally avoided and the MMC straightaway recommended for deletion of these courses from the schedule of Act of 1965. According to Mr Dada, no norms are prescribed by MMC, and hence there was no question of its compliance. In addition, it is submitted that the Government hospitals were excluded from inspection and the CPS courses are allowed to continue in these colleges.

In short, according to Mr. Dada, the whole exercise of derecognising the courses run by CPS by the State Government as well as the NMC is a perfunctory and biased approach, and in doing so, the principles of natural justice and reasonableness are thrown to air and therefore, the said decisions definitely deserve interference, in the interest of the students at large, and also in the interest of the State itself, which through these courses are able to secure Doctors for rural areas and cater to the need of people residing in this areas.

(ii) Submissions Advanced By Mr.Tulzapurkar in WP 2144/2024

32. Dr.Tulzapurkar, representing the Petitioners in Writ Petition No.2144 of 2024, the four individuals running four colleges, in support of the reliefs sought therein in opposing the action proposed against the colleges, has submitted that the CPS itself has prescribed Minimum Standards Requirement (MSR) and that the MMC never prescribed any norms and, therefore, CPS adopted its own norms. According to him, the MMC inspected the colleges and submitted the two reports based upon which show cause notice dated 14/03/2023, was issued which received an exhaustive reply from the CPS on 20/03/2023. The show cause notice was subjected to challenge in a writ petition, which was dismissed. According to him, the impugned order is based on the recommendation of the MMC and Section 3 of the Act contemplates the Council to be comprising of eighteen (18) members, but when it is substituted by one member, he would call in question the said decision, as according to him, the collective body did not exist after the Administrator was appointed. The learned senior counsel has, therefore, questioned the permissibility of the Administrator (a single member) to issue recommendation. He would completely disagree with the submission advanced on behalf of the Respondents as well as the PIL Petitioner that the issue is foreclosed by the order passed by Justice G.S.Patel in Writ Petition No. 1214/2023.

In addition, on behalf of the hospitals, it is specifically submitted by Mr.Tulzapurkar that upon the inspection being carried out, no reports thereof are furnished to the respective

hospitals and the recommendation is rather based on biased opinion of one individual, who has acted as an Administrator. Another strange factor, according to Mr.Tulzapurkar is, that the Government Hospitals are excluded from inspection, which are around twenty (20) in number and in these colleges, despite no inspection being carried out, the CPS continue to run its courses.

According to Mr. Tulzapurkar, the hospitals run by the four doctors offering distinct diplomas were compliant with the Minimum Standard Requirement(MSR) framed by the CPS for each diploma, and since the MMC did not specify any norms to be followed by the institutions offering courses of CPS, they cannot be blamed of non-complying with the requirements. According to the learned senior counsel, the CPS courses are being permitted to be run in other States, but by the impugned orders passed by the State Government on 13 July 2023. The courses run in the hospitals of the petitioner have been derecognised which has violated the right under Article 19(1)(g) of the Constitution and is also violative of Article 14.

(iii) Submissions advanced by Mr. Aditya Seetharamkan

33. Writ Petition (L) No. 24553 of 2024 is filed by the two petitioners, who have completed their MBBS and they are registered with State Medical Council and they are aggrieved by the decision of the Union of India, adopting NMC's recommendation against starting the counselling process for Academic Year 2023-24. The learner counsel has urged that this decision has adversely affected their career prospects. He would also adopt the argument of Mr. Dada in submitting that

the legitimate expectations of the petitioners in getting themselves admitted in diploma courses run by CPS is defeated by the impugned decision. According to the learned counsel, the reliance upon the decision in case of Ashish Ranjan is completely misplaced.

(iv) Submissions advanced by Mr.Thorat

34. Mr.Thorat, in support of the PIL Petition, has raised four prominent issues amongst various other points, while supporting the action of the MMC as well as the NMC and PGMEB Board. He would raise a question whether (1) CPS functions as a statutory authority regulating the postgraduate medical education; (2) Can it open hospitals in the Maharashtra; (3) As private entity, can it impart education in specialised subjects of post-graduation in medicine; (4) Is it empowered under any statute or legislation to confer degrees by affiliating various hospitals, as on day of Repeal of Act of 1916

According to Mr.Thorat, the moot question that arises for consideration, is what amounts to recognition under the IMC Act, 1956 and by taking us through the scheme of the statute, he would submit that Section 11(1) recognises the qualification of the courses and as a consequence of this provision, he would submit that upon ten (10) courses being recognised under the IMC Act, 1956, Section 11(1) has identified the right of the students to receive the qualification, but in any case, it is not to be considered as right of an institution to run the college/course. According to him, the UGC Act, 1956 contains a provision in form of Section 22 as a

right to confer degrees, but since the Indian Medical Degrees Act, 1916, is repealed in the year 2016 thereafter, there is no propriety in the CPS to confer the degrees in form of diploma qualifications and, according to him, just because the qualification/degree by the CPS is recognised, it does not mean that it is empowered to confer the degree. He has also invited our attention to the other provisions in the Act, which include Sections 16 to 19 and has specifically contested the submission of Mr.Dada that the curriculum of the CPC has received recognition under Section 11(2) of the Act of 1956, since it existed before 1993 and, therefore, it is automatically covered within the Act of 1956.

According to him, there is succinct distinction in Sections 11(1) and 11(2) of the Act, and according to him, a right under Section 15 of the Act is a right of those, who have acquired the qualifications.

With the introduction of Sections 10-A to 10-D in the IMC Act, the whole gamut of medical education has undergone change as per Mr.Thorat and from coming into effect of the said provision, it is not open for any person to establish a medical college, or for any medical college to open a new or higher course of study or training, which would enable a student of such course or training to qualify himself or even to increase its admission capacity in any course of study or training, except with the previous permission of the Central Government obtained in accordance with the provision introduced w.e.f. 27/08/1992.

35. The newly added provision contemplated submission of a scheme to the Central Government in case a person or medical College was to obtain the permission for establishing a medical College or opening of a new or higher course of study or training for qualifying award of any recognised medical qualification. The Scheme received approval only on recommendation of the MCI and the Council while making its recommendation is to have regard to the factors, namely, whether the proposed medical College or the existing medical college seeking to open (new) or higher course of study or training would be in a position to maintain minimum standards of Medical Education, as prescribed by the Council under section 19A in case of graduate qualifications, or in the case of postgraduate medical education. It also contemplated examination of the necessary facilities in respect of staff equipment, etc. to ensure proper functioning of the medical college or conduct of a new course. In addition, whether adequate hospital facilities have been provided or would be provided and whether any arrangement has been made for imparting proper training to students was the relevant consideration in making recommendation to the Central Government.

According to Mr Thorat, the Council is empowered to prescribe minimum Standards of Medical Education for grant of recognised medical qualifications (other than postgraduate medical qualifications) by Universities or medical institutions in India. By virtue of Section 20 of the Act, Postgraduate Medical Education Committee was competent to prescribe standards of Postgraduate Medical Education for guidance of

the Universities in the matter of securing uniform standards for postgraduate medical education throughout India.

In exercise of the rule making power under section 33, the Council was authorised to make Regulations to carry out the purposes of the Act, including the conduct of the medical courses, examinations, prescribing standard of professional conduct, etc. Mr Thorat would rely upon the PGMER, which contemplated the general conditions to be observed by postgraduate teaching institutions, which clearly focused upon the training of PG students involving learning experience targeted towards the needs of the community. These Regulations prescribed the procedure for selection of candidates, the period of training, the departmental training facilities, including the staff faculty along with the teacher student ratio for clinical subjects as well as the details of training programmes, examinations, available beds as a part of training. According to Mr Thorat, it was not and it is not open for an institution to impart medical education without adherence to the norms prescribed by IMC and thus, the contention of CPS that it is not controlled by the said regime, is incorrect submission.

36. In the wake of the amendment in the IMC Act in 1992, as per Mr.Thorat, none of the college, which runs the CPS course, can survive after 1992 amendment and he would canvass that there is no difference in the situation prevailing prior to 1992 and post 1992 scenario, as according to him, monitoring by MCI was always there. The argument that only after 1992, the regime of obtaining the permission from the Central

Government prevails, and the argument of the CPS that since it was a course, which is already recognised prior to this amendment being brought into force, and they are not bound by any norms, according to him, is a fallacy. Relying upon the decision of the Apex Court in the case of **Medical Council of India Vs.State of Karnataka & Ors**[2], where the role of MCI is highlighted, Mr.Thorat would submit that all the while throughout, it was imperative for any medical college/institute to adhere to the standards prescribed and the said position continue even when the National Medical Commission Act, 2019 was enacted, which aimed a medical education system that improves access to quality and affordable medical education and ensure availability of adequate and high quality medical professionals in all parts of country by repealing the existing MCI Act, 1956. He would place reliance upon MSMER, which specifically prescribe the mechanism for keeping control over the medical education. The defence of the CPS that it is running the courses since 1912 and, therefore, it is not bound by any norms/Regulations prescribed earlier by MCI and now in the present regime by the NMC, is not an acceptable argument, according to Mr.Thorat.

Another aspect on which Mr.Thorat has focused his attention is the definition of the term 'medical college/ institution', which according to him, is not a building, but it attains the said status, when it accepts students (UG+PG), and then it becomes college. He would submit that the hospital itself may be a college and he would cite a example of Tata Hospital, where oncology is taught as well as the specialised hospital i.e. Nanavati Hospital.

2 1998 (6) SCC 131

37. By placing reliance upon the sequence of events, Mr.Thorat submitted that in the year 2009, the CPS courses received de-recognition, but once again they were introduced by the Central Government, without following the mandate in Section 10-A and he is extremely critical about the report submitted by Dr.Devi Shetty and Athani Committee, which is accepted as a basis for restoration of the courses in the IMC Schedule I. In fact, on 17/10/2017, 39 diploma courses were included as per the report of Dr.Devi Shetty, but this was not approved by the MCI and, therefore, on 22/01/2018, the Central Government deleted 36 diplomas out of 39 and restored 10 courses.

Coming to the present scenario, Mr.Thorat has submitted that the admission to the CPS courses stopped in the year 2022-2023 and, thereafter, the authorities found foul of the courses run by CPS at both levels i.e. at the State Government level by the Maharashtra Medical Council and at the Government of India level through the National Medical Commission.

Submitting that he filed the PIL when the Government started the admission process for the year 2023-2024 and sought the necessary reliefs, as according to him, the courses run by the CPS should be completely shunted and he has raised a challenge to the PG courses retained in IMC Act, 1956, as well as to the inclusion of ten courses in the Act of 1965, by the State of Maharashtra. According to him, in the wake of the Repeal Act of 2016, the power to confer degrees, which were earlier available with the CPS is taken away and, therefore, the CPS which is only an examining body, cannot conduct any courses through colleges, which do not adhere to

the norms prescribed by the MCI as well as NMC. He has questioned the issuance of Notification dated 17/10/2017 and 22/01/2018 restoring the courses of the CPS, as according to him, they are hit by Section 10-A of the IMC Act, 1956 and it is his clear stand that Section 11(2) of the IMC Act cannot be read to mean that the qualifications, which existed prior to coming of the Act, merely because they find place in Schedule 1, be permitted to be run without adhering to the norms set out by the apex body i.e. the IMC or the NMC. The post-graduation courses will receive recognition only when they are run in accordance with the requirement in law and merely because the committees sitting in air-conditioned chambers, without actually visiting the site, cannot support the continuation of the courses by the CPS.

38. In support of his contention, Mr Thorat has placed reliance upon the decision of the Supreme Court in case of **Shirish Govind Prabhudesai Vs. State of Maharashtra and others**,[3] where a distinction is drawn between the recognised and non recognised medical colleges, by observing that recognition being based on certain objective standards relating to medical education and the competitive merit forming the basis for admission to a recognised medical college, justify a restriction imposed for grant of permission for migration/transfer from one medical College to another. Reliance is also placed upon the decision of Karnataka High Court in case of **Dr. Pramod Pandurang Vs. Union of India (Writ Petition No.34504 of 2003 (Edn.) decided on 11/08/2004)**, which has highlighted the role of medical council and also the

3 AIR 1993 SC 1736

significance of Section 10 A of the IMC Act, 1956. Reliance is also placed upon the decision of the Apex court in case of ***Thirumuruga Kripananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust Vs. State of Tamil Nadu &*** **Ors**[4]**,** when the conflict between the Indian Medical Council Act, 1956 and in specific section 10 A and the State Act fell for consideration.

According to Mr. Thorat. the PIL petitioner has also intervened in the petition filed by CPS, opposing the relief claimed by it and he has also advanced arguments in support of the challenge raised to the validity of Section 28 of the MMC Act, which is the power of the State Government on recommendation of the medical council of the State to introduce or delete the courses in its schedule, which also include on recognised courses. According to him, IMC Act is relatable to 66 of List-1 of Schedule VII and if this Act as well as the NMC Act of 2019, lay down standard and supervise/monitor the medical education, and hence, the State is denuded of its power to legislate on the same subject and Article 246(1) of the Constitution is pressed into service. It is also submitted that the Act of 1965 is covered by Entry 26 where the power is available to regulate legal, medical, and other profession which is different than Entry 25.

Reliance is also placed in this regard upon the decision of the Apex Court in case of **Baharul Islam** (supra), which involved a statute enacted by Assam legislature, which established a regulatory authority.

39. It is the apprehension expressed by Mr Thorat that today, all courses run under the umbrella of CPS are removed

4 1996 (3) SCC 15

from schedule I of the IMC Act, but if Section 28 is not strike down, by invoking the power under this provision, all of them may be re-introduced in the Schedule.

Coming to the reports of inspection of the individual colleges, Mr Thorat express his dismay over the fact that the colleges, which do not conform to the standards prescribed by MCI, offer the diploma of CPS without meeting the requirement of infrastructure etc. He would fairly submit that if this Court direct 150 hospitals to give affidavits that they would comply with applicable norms of NMC and if they apply to the National Board for Examination (NBE), he has no difficulty if these colleges are permitted to run the courses.

(v) Submissions advanced by Mr.Gole on behalf of NMC.

40. We have also heard Mr.Gole, learned counsel for NMC i.e. erstwhile MCI, who placed reliance upon the decision of the Apex Court in the case of MCI Vs. State of Karnataka (supra), which has held that regulation of MCI is mandatory. He has taken us through the correspondence which is placed by him in the synopsis in form of various letters addressed by MCI to the Government of India and by reading of the letters dated 16/01/1998, 23/09/1999, 29/02/2000, 10/08/2000 and 27/08/2001, Mr.Gole has submitted that MCI was all the while against the continuation of the courses run by CPS and was insistent in withdrawing the recognition of courses in Schedule I. By relying upon PG Medical Regulations, 2000, Mr.Gole would submit that on coming into force these Regulations, the earlier course could have continued till the last student is passed out, but not thereafter.

He would also place reliance upon the affidavit filed in the PIL and he would strongly argue before us that Dr.Devi Shetty Committee was constituted by the Central Government in 2016 and despite its recommendation, MCI kept on insisting the relevance of Section 10-A in the IMC Act, 1956. According to him, when the Notification was issued by the Central Government on 17/10/2017 stating that the decision was taken in consultation with MCI, it seriously objected on 02/11/2017, by asserting that MCI was never consulted. Overruling its objection, the Government of India issued direction to implement Devi Shetty report, by including the courses for catering to the needs of the rural hospitals in the State,but excluding them from teaching category.

Another letter to which Mr.Gole has invited our attention is addressed to the Government of India with reference to the National Board of Examination, where the MCI, in great detail, has set out as to how its objection was misconstrued. In any case, it is his submission that MCI was always consistent in its stand in not approving the courses run by the CPS.

He would emphasis on the importance of the Regulations framed for governing the medical education for graduate and postgraduate courses and would place reliance upon the decisions in the case of ***Preeti Srivastava Vs. State of Madhya Pradesh***[5] and ***Thirumuruga Kripananda*** (supra).

In fact, Mr.Gole, in no uncertain words, supported the prayer made in the PIL and has adopted a bold stand that the decision taken by the Central Government was in ignorance of the MCI Regulations, which does not have its support. Further, according to him, the National Medical Commission Act, 2019

5 (1999) 7 SCC 120

having coming into force, Section 60 contains an repeal and saving clause and though the MCI stood dissolve as per Section 61(2), the old Regulations continued to remain in force till the new are framed and the new regulations were framed in 2023 and the old regime continued its operation. By specifically relying upon its affidavit and referring to the meeting of the NMC dated 24/01/2024, Mr.Gole would submit that NMC recommended de-recognition of the said courses and on 16/07/2024, the decision is taken, which is the subject matter of challenge by CPS.

(vi) Submissions of Mr.Nerlekar on behalf of MMC

41. The learned counsel supported the action of MMC and the inspection reports and adopted the arguments advanced by Mr.Gole.

(vii) Submissions advanced MR.RUI RODRIGUES

42. Mr.Rui Rodrigues, learned counsel representing the Union of India, has candidly admitted by relying upon the affidavit of NMC that the Government of India and the NMC are on the same page today and the stand adopted by the NMC is acceptable for the Government of India. According to him, the CPS is an examining body and finds place in Schedule 1 of the IMC Act, 1956 in its capacity as examining body and that is how the degrees conferred by the CPS are recognised, but if it attempts to affiliate any college/institution then it must conform to the norms prescribed and he would invite our attention to Schedule 1 (See Section 11), which has included the medical qualifications granted by the universities or

medical institutions in India, and according to him, the courses run by various universities like the University of Allahabad, University of Andhra are introduced as recognised medical qualifications under Section 11. In this Schedule, the College of Physicians and Surgeons, Bombay is included alongwith the courses run by it like M.C.P.S., F.C.P.S. with a specific noting that these qualifications shall be recognised medical qualifications under this Schedule only when they are held by persons holding any other medical qualification specified in the Schedule. According to Mr.Rodrigues, if something new is to be added in the IMC Act, then the procedure under sub-section (2) of Section 11 must be adhered to and at the relevant time, this power was permissible to be exercised by the Central Government in consultation with the Medical Council of India. He would emphatically submit that when the CPS courses were deleted from the Schedule to IMC Act in the year 2009, then they could have gained entry only via Section 11(2) route. He would also draw parlance with the courses run by NBE, by following the route of sub-section (2) of Section 11. Very fairly Mr.Rodrigues would submit that when the CPS courses were brought back into Schedule 1, the only point for concern was that it was offering low cost PG courses, which were intended to be recognised as intermediate qualifications, but now in the wake of the National Medical Commission Act, 2019, Mr.Rodrigues would submit that the Government of India has a secondary role to play in medical education, as the National Medical Commission with PGMEB being on the driving seat. He would also agree with Mr.Thorat in submitting that with the Repeal Act, 2016, the CPS has divested the powers to

confer the degrees and if it was only an examining body, it cannot affiliate any college/hospital and now it is not even competent to confer degree/diploma.

(vii) Arguments of Dr.Saraf on behalf of the State of Maharashtra

43. Dr Birendra Saraf, the learned Advocate General has vehemently argued that the matter has to be looked at with a broad view as CPS has very boldly stated that it is not governed by any law and in fact, it did not allow inspection in several of the hospitals, where the courses are being run. The Advocate General is very categorical in making a statement that the State of Maharashtra do not want the degrees conferred by CPS or its affiliated institution/hospital in uncontrolled manner. According to him, Section 10A is the mantra of starting a new course or opening of a medical college, wherein the admission is governed by the centralised admission process under PGMER. According to him, CPS may be an examining body, but it does not mean that even an institution affiliated to it shall not follow the norms. He would invoke the PGMER 2000, which were in force at the relevant time, and would specifically rely upon Rule 236 thereof. In addition, he has also taken us through Rule 11, which prescribe the departmental training facilities, which cover the staff faculty and set out the minimum requirement for a post graduation institution, department wise. For example, if you have a diploma in pediatrics or an astrology, then there is a requirement of postgraduate training, depending upon the type of work being carried out in the department regulations,

also contemplate the bed strength in clinical departments, and also the availability of space and examination cubicles in outpatient departments. There is also a curb on the number of postgraduate students to be admitted as per the Regulation, but the learned Advocate General pose a question about its presence in the hospitals, where the CPS courses are run. He would also invoke the provisions contained in the MSMER 2023, which has defined the term 'medical college' or 'medical institution' and has set out a mandate of an annual disclosure by the medical College or institution after its establishment, to be followed by the evaluation of the information. According to him, failure to comply with the statutory provision and the Regulation framed thereunder or non-adherence to the minimum standards of requirement will invite a penalty under Rule 8, which includes stoppage of admission in the next subsequent years. The Advocate General boldly states that State of Maharashtra need more PG doctors, but definitely not half-baked doctors and as Justice Patel, in his order has disconnected them to be "hole in the wall", stating that it is an unfortunate situation that the State or none of its functionary has control over them under the MMC Act. He would raise a question as to how would they of these institutions be tested. According to him, pursuant to the passing of the order in WP No. 1214 of 2023, all the necessary documents sought for including letters, minutes of meeting, directions relating to appointment of inspection team as well as complete copies of inspection report of the institute that have been inspected as well as the government orders in relation to the subject were permitted to be collected from the office of the Government

Pleader. Dr Saraf has relied upon the decision of the Apex Court in case of KS Bhoir versus State of Maharashtra,[6] which has highlighted the significance of Section 10 A in the IMC Act, which has to be written in consonance with the other subsections by keeping in mind the object in introducing the provision, being to achieve highest standard of medical education. He has also placed reliance on the decision in case of Medical Council of India Vs Rama Medical College, Hospital and Research Centre, Kanpur & Anr,[7] to emphasise that section 10 A speaks of permission and not recognition on year to year basis, as recognition under section 11 may follow once the newly established medical College satisfactory, complete five years with graduation of first batch of MBBS students admitted. The Apex Court has categorically held that recognition to a degree awarded by a newly established Medical College can be given only after all requirements of MCI for establishment of medical College are fulfilled and no further admissions can be made until such requirements are fulfilled. In short, the submission of the Advocate General is that State do not need such unregulated activity under the guise of medical education. Dealing with the validity of section 28(2), and specifically relying upon the proviso, he would submit that CPS has denied the authority of State Medical Council to inspect their courses as they feel themselves to be sufficiently competent to run them as the degrees. But according to him, the State has a right to say that the courses will not be included under the schedule in the wake of the deficiencies noted during the inspection of the colleges heed to the fact that

6 2001(10) SC 264
7 (2012)8 SCC 80

the action has come against them belatedly. By inviting our attention to the inspection report addressed by the Council to the Medical Education Department, he has pointed out the deficiencies as regards, absence of an undergraduate college, lack of required number of beds, teachers, room, etc. According to him, there was a huge correspondence entered between the State and NMC and ultimately after inspection by MMC, show cause notice was issued to CPS when it resist the allegations. All the discrepancies in form of reports are given to CPS and it approach the Court challenging the shortcuts but was turned down and thereafter, the necessary documents were also furnished. It is a submission that as far as the deficiencies are concerned, there is no denial from CPS that it never existed, and in fact, it has conceded to this fact as no reply submitted on merits. He would, therefore, pray that the impugned orders must be upheld and the petitions of CPS be dismissed. As regards the challenge to Section 28, the learned AG has counted the argument of Mr. Thorat, but according to him, a belated challenge to the validity must be turned down.

(C) Analysis and consideration of contentions raised

44. The College of Physicians and Surgeons of Mumbai, established in the year 1912, which is approved by the then Government of Bombay Presidency and it was directed to be incorporated as a Society registered under the Societies Registration Act, is an examining body based on the lines of Royal College of Physicians and Surgeons, London, conducting post-graduate examination, post doctoral and super specialties diplomas and fellowships. As per the Indian Medical Degrees

Act 1916, an enactment, to regulate the grant of titles implying qualification in Western medical Science and the assumption and use by unqualified persons of such title, 'Western medical Science' was defined to mean the western methods of Allopathic Medicine Obstetrics and Surgery.

Section 3 of the said Act prescribed the right of conferring, granting or issuing in the States, degrees, diplomas, licenses, certificate or other documents, in stating that the holder, grantee or recipients thereof is qualified to practice western medical science and such right is conferred upon the authorities specified in the schedule or by such authority as the State Government may by notification in the official gazette authorize.

The schedule under Section 3 of the Act included 'The college of Physicians and Surgeons of Bombay." Thus, as early as in 1912, the CPS, as an examining body was authorized to confer degrees/diplomas/licenses, so as to make the recipient thereof qualify to practice western medical science.

45. By an Act No.27 of 1933, a Medical Council of India (MCI) was constituted as prescribed in Section 3 of the enactment, as a body corporate, having perpetual succession and common seal, with power to acquire and hold property and to contract.

Section 11 of the said Act recognized the medical qualifications granted by the medical institutions in British India included in the first schedule, whereas it also prescribed that any medical institution in British India, which grants medical qualification but is not included in the first schedule, it

may apply to the Governor General, to have such qualification recognized and on consultation with the Council, it was authorized to amend the first schedule to include the qualifications therein. Schedule I included qualifications of six Universities. The Schedule was amended to include MCPS Diploma granted by CPS, when granted after 30th April, 1944.

46. The Indian Medical Council Act, was enacted on 30/12/1956, which provided for reconstitution of Medical Council of India and the maintenance of a Medical Register for India and for matters connected therewith. This Act came into force from 1/11/1958, and a council consisting of the members set out in Section 3 was constituted.

Act of 1956 defined 'Indian Medical Register' as a register maintained by Council. It also defined "Medical Institution" to mean any institution, within or without India, which grants degrees, diplomas, or licenses in medicine. 'Recognized medical qualification' was defined to mean any of the medical qualifications included in the schedules and it also defined the 'State Medical Council' as a medical council constituted under any law for the time being in force in any State, regulating the registration of practitioner of medicine.

47. Section 11 of the Act provide for recognition of medical qualifications granted by institutions or Universities in India and it read thus:-

> **"11. Recognition of Medical Qualification Granted By Universities or Medical Institutions in India** -
> (1) The medical qualifications granted by any university or medical Institution in India which are included in the first Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any university or medical Institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date."

48. Corresponding the aforesaid provision, the first schedule enlisted the recognized medical qualifications granted by the universities or medical institution in India and this included the college of Physicians and Surgeons, Bombay, and included the following entry added on 28/03/1956.

"*COLLEGE OF PHYSICIANS AND SURGEONS, BOMBAY*

Membership of College of Physicians and Surgeons, Bombay	*M.C.P.S (This qualification shall be a recognised medical qualification only when granted after 30th April, 1944).*
Fellowships of College of Physicians and Surgeons, Bombay in Medicine, Pathology, Surgery and Dermatology	*F.C.P.S. (Med.)* *F.C.P.S. (Path)* *F.C.P.S. (Surg.)* *F.C.P.S (Derm.)*

These qualifications shall be recognised medical qualifications only when granted after 1st April, 1954.

Fellowships of the College of Physicians and Surgeons. Bombay in Midwifery and Gynaecology, Ophthalmology and Diplomas of the said College in Pathology and Bacteriology, Gynaecology and Obstetrics and Child Health.	*F.C.P.S (Mid & Gynae.)* *F.C.P.S (Ophth.)* *D.P.B. (Dip. in Path. & Bact.)* *D.G.O. (Dip. in Gynae. & Obst.)* *D.C.H. (Dip. in Child Health)*

In Schedule III which recognised medical qualifications granted by medical institutions not included in Schedule I, the entry read thus :-

"COLLEGE OF PHYSICIANS AND SURGEONS, BOMBAY

Licentiate of the College of Physicians and Surgeons, Bombay	*L.C.P.S. (Bom.)*
Fellowships of the College of Physicians and Surgeons. Bombay in Midwifery and Gynaecology, Ophthalmology and Diplomas of the said College in Pathology and Bacteriology, Gynaecology and Obstetrics and Child Health.	*F.C.P.S. (Mid & Gynae)* *F.C.P.S. (Ophth.)* *D.P.B. (Dip. in Path. & Bact.)* *D.G.O. (Dip. in Gyn. & Obst.)* *D.C.H. (Dip. in Child Health*

These qualifications shall be recognised medical qualifications under this Schedule only when they are held by persons holding any other medical qualification specified in this Schedule."

49. Section 10A is introduced in the Act of 1956, with effect from 27/08/1992, by Act No.31 of 1993, which introduced a provision for permission for establishment of new medical college, new course of study and this was introduced as a whole scheme to be followed when a new medical college has to be established or a new or higher course of study or training is to be opened, which would enable a student to qualify himself for the award of any recognised medical qualification or when it contemplated increase in the admission capacity in any course of study or training. Section 10A specify thus :-

"10A. Permission for establishment of new medical college, new course of study.- (1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) no personal shall establish a medical college; or
(b) no medical college shall-
(i) open a new or higher course of study or training (including a post-graduate course of study or training) which

would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section."

Sub-section 2 to sub-section 7 of Section 10A prescribe the procedure to be followed by a person or medical college, which was desirous of obtaining the permission under sub-section 1 and it also set out the factors which shall be taken into consideration, by the council while it make its recommendation to the Central Government, either approving the scheme.

Sub-section(8) prescribe that when the Central Government passes an order of either approving or disapproving the scheme under the Section, a copy of the same shall be communicated to the person or to the college concerned.

50. Along with Section 10A, Section 10B and Section 10C were also introduced, 10B clearly imposing an embargo as regards the medical qualification granted to any student of medical college which is not established with the previous permission of the Central Government in accordance with provision of Section 10A, whereas Section 10C specifically prescribed that if after 1st day of June, 1992 and on or before the commencement of the Indian Medical Council (Amendment) Act, 1993 any person has established a medical college or any medical college has opened a new or higher course of study or training or increased the admission capacity, such person or medical college, as the case may be, shall within a period of one year from the commencement of

the amendment in the Act seek permission of the Central Government, so as to bring it in conformity with Section 10A.

The import of the said provision can be appreciated in the wake of the SOR of the Amendment to the following effect :-

> "3. Meanwhile, it had been noticed that some State Governments were giving approvals for the opening of new medical colleges on their own, without insisting on the provision of basic prerequisites of hospital, equipment, laboratories or qualified faculty members, etc. In certain cases, after the colleges gave admission to students they began exercising the combined pressure of the management students and their families for grant of approval to the medical colleges by the Medical Council of India.
>
> 4. In order to curb such mushroom growth of medical colleges, the President promulgated the Indian Medical Council (Amendment) Ordinance, 1992 (Ord.13 of 1992) on the 27th August, 1992 to amend the Indian Medical Council Act, 1956 by incorporating therein provisions for prior permission of the Central Government for establishing any new medical college and for starting any new or higher courses of study or increasing admission capacity in any course of study or training including, post-graduate course of study in any existing medical college."

51. In the scheme of the Act of 1956, Section 11 recognised the medical qualifications granted by universities or medical institution in India, as included in first schedule, but if any university or medical institution in India, which grants a medical qualification, which is not included in the first schedule, it was open for it to apply to the Central Government to have such qualification recognised and the Central Government, in consultation with the Council, by notification in the official gazette, include the qualification therein, declaring that it shall be a recognised medical qualification only when granted after a specified date.

52. Section 15 of the Act of 1956 specified that the medical qualifications included in the schedules appended to the Act

shall be sufficient qualifications for enrollment in any State Medical Register.

The recognised medical qualification does enable a person to have his name included in the Indian Medical Register and also made him entitle for enrollment on any state medical register.

53. The MCI constituted under Section 3 of the Act of 1956 is empowered to make Regulations by virtue of Section 33, with the previous sanction of the Central Government to carry out the purposes of the Act and this include the following:-

> *"(j) the courses and period of study and of practical training to be undertaken, the subjects of examination and the standards of proficiency therein to be obtained, in Universities or medical institutions for grant of recognised medical qualifications;*
>
> *(k) the standards of staff, equipment, accommodation, training and other facilities for medical education;*
>
> *(l) the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examination;*
>
> *(m) the standards of professional conduct and etiquette and code of ethics to be observed by medical practitioners; and*
> *[(ma) the modalities for conducting screening tests under sub-section (4A), and under the proviso to sub-section (4B), and for issuing eligibility under sub-section (4B) of section 13;]*
>
> *[(mb)] the designated authority, other languages and the manner of conducting of uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level;]*
>
> *[(n)] any matter for which under this Act provision may be made by regulation."*

54. In exercise of the power conferred by Section 33 of the Act of 1956, the MCI framed various regulations including (a)

The Medical Council of India Regulations, 2000 (b) Minimum qualification for teachers in Medical Institutions Regulations 1998, (c) the Post Graduate Medical Education Regulations 2000. (d) Indian Medical Council Professional Conduct (Etiquette and Ethics) Regulation, 2002. (e) Medical Council of India (Prevention and Prohibition of Ragging in medical colleges/institutions (Regulations 2009).

The aforesaid Regulations enabled the MCI as an Apex Body to exercise control over the medical college/medical institution to conform to the standards set by it as an Apex body and these Regulations which had the concurrence of the Central Government were mandatorily to be adhered to by all the medical institutions, which were authorised to grant degrees/diploma/licences in Medicine.

The PGMER 2000, was formulated by keeping in mind the goals and general objectives of the Post Graduate Medical Education Programme to be observed by Post Graduate Medical Institutions and it categorically set out the procedure for selection of candidate for Post Graduate courses, their period of training/departmental training facilities etc, along with the number of post graduate students to be admitted for the Course including the student-teacher ratio for Government Colleges/Non-government Colleges as well as presence of bed facility in the institution, so that the students can gain practical experience. In addition, Regulations of 2000 also prescribed the manner of conduct of examination including the thesis/theory/clinical/practical and oral examination for distinct courses of Post graduation.

55. In the whole scheme of the IMC Act, 1956, the conduct of medical courses, examination and the manner in which the degrees shall be conferred by the medical institution has been the focus.

As per the Indian Medical Council Act, 1956, Section 10B specifically stipulate that no medical qualification granted to any such student except in accordance with Section 10A, shall be recognised as a medical qualification for the purpose of the Act.

Under Section 11 of the Act of 1956, only the qualifications granted by any University or medical institutions in India which are included in the First Schedule are recognised as medical qualification for the purpose of the Act. But if any University or medical institution which grants a medical qualification, which is not included in the First Schedule, then the Central Government may amend the Schedule to include the qualification.

What is important in the Scheme of Act of 1956 is Section 16 which prescribe that every University or medical institution in India which grants a recognised medical qualification, it shall furnish such information as the Medical Council may, from time to time, require as to the course of study and examinations to be undergone for the purposes of attaining qualification and other details requisite for obtaining such qualification.

Under Section 17 of the Act, the Medical Council shall appoint inspectors to carry inspection of any medical institution, college, hospital or any other institution, where medical education is imparted for the purpose of

recommending to the Central Government recognition of medical qualifications granted by that University or that institution.

Similarly, Medical Council is also authorized to appoint visitors who shall submit a report on the adequacy of standards of medical education which shall include staff, equipment, accommodation, training and other facilities or on the efficiency of examination that is required to be undertaken. Most relevant provision in the Scheme of enactment is in form of Section 19 which is a provision of Withdrawal of recognition, when it appears to the Council that the course of study and examination to be undergone in, or the proficiency required from a candidate at any examination held by, any University or institution, do not conform to the standards prescribed by the Council and in such a contingency, the Council shall make a representation to the Central Government. Even if the staff, equipment, training and other facilities for instruction and training provided in such University or medical institution or any college or other institution, also do not conform to the standards, the Council shall bring it to the notice of the Central Government.

Upon such representation being received, the Central Government shall forward it to the State Government or the State in which the University or medical institution is situated and the State Government shall forward it along with its remarks to the University or the medical institution, requiring it to submit its explanation to the State Government.

Upon receipt of such explanation or when no explanation is received within the period prescribed, the State Government

shall make its recommendations to the Central Government, which is then competent to direct that an entry shall be made in the appropriate schedule against the medical qualification declaring that it shall be recognized only when granted before a specified date or that that qualification, if granted to students of specified college or institution, only when granted after a specified date.

This is the manner in which the MCI was authorised to supervise the running of the institutions offering medical qualification, right from inception for recognising the medical qualifications.

56. The importance of Regulations framed by MCI received attention of the Apex Court in case of ***Thirumuruga Kripananda*** *(supra)* when a conflict appeared before it between the provisions of the IMC Act, 1956, and Dr.M.G.R Medical University, Tamil Nadu Act, 1997, and the repugnancy arising between the two enactments was pointed out as the State Act has received the assent of the President.

Recognising the supremacy of the Indian Medical Council Act, 1956, the Apex Court observed thus :-

> *" **27.** ..... It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to all medical college. We-have-already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail. Feacher-student ratio prescribed is 1 to 10, exclusive of e the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals*

will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached hospitals.

***28**. In the colleges in the State of Karnataka, the Medical Council prescribed the number of admissions that these colleges could take annually on the basis of these regulations. Without permission of the Medical Council, the number of admissions could not be more than that prescribed at the time of granting recognition to the college. However, it appears that in violation of the provisions of the Medical Council Act, the universities and the State Government have been allowing increase in admission intake in the medical colleges in the State in total disregard of the regulations and rather, in violation thereof. These medical colleges cannot admit students over and above the intake fixed by the Medical Council. These colleges have acted illegally in admitting more students than prescribed. The universities and the State Government had no authority to allow increase in the number of admissions in the medical colleges in the State. When regulations prescribed that the number of teaching beds will have to be in the ratio of 7 beds per a student admitted, any increase in the number of admissions will have corresponding increase in the teaching beds in the attached hospital. These regulations have been overlooked by the universities and the State Government in allowing admissions over and above that fixed by the Medical Council. The respondents have not produced any document to show that increase in admission capacity to medical colleges over that fixed by the b Medical Council has any relation to the existence of relevant infrastructure in their respective colleges and that there is also corresponding increase in the number of beds for students in the attached hospitals. Standards have been laid by the Medical Council, an expert body, for the purpose of imparting proper medical education and for maintaining uniform standards of medical education throughout the country. Seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the regulations of the Medical Council.*

57. In the wake of the aforesaid discussion, it was held that it is the Medical Council which can prescribe the number of students to be admitted in medical courses in a medical college or institution, and then, the Central Government alone which can direct increase in the number of admissions, but only on recommendation of medical council, as section 10A, 10B and 10C will prevail over the provision in the State Act and the

contention of the State Government that it had the power to regulate admission to medical colleges being prerogative of the State was rejected.

58. The Indian Medical Council Act, 1956 is enacted by invoking Entry 66 of List I, namely, "Education, including universities, subject to the provision of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III". It is a complete code, which governs the establishment, functioning, including maintenance of education and even de-recognition of the medical colleges.

In the wake of the said legislation, the States are denuded of legislative power to legislate on medical education under Entry 25 of the concurrent list, since the Parliament has exercised its power and enacted the IMC Act.

59. In ***Preeti Srivastava Vs. State of Madhya Pradesh***[8], the Apex Court considered the question, whether it was open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission to the post-graduate medical courses under the reserved seats category vis-a-vis the general category candidates.

Taking note of the fact that both, the Union as well as the States have the power to legislate on education, including medical education, subject, *inter alia,* to Entry 66 of List I, dealing with laying down standards in institutions for higher education or research and scientific and technical institutions and also coordination of such standards, it is categorically held

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that the State shall have right to control education, including medical education so long as the field is not occupied by any Union Legislation and, therefore, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education because that is exclusively within the purview of the Union Government. Therefore, while prescribing criteria for higher education, the State could not have adversely affect the standards laid down by the Union of India under Entry 66 of List I. It was conclusively ruled that though it is within the legislative competence of the State Legislature to prescribe higher educational qualifications and higher marks for admission in addition to the one fixed by the Indian Medical Council, in order to bring out the higher qualitative output from the students, who pursue medical course and certain factors were enlisted, to be described as non-exhaustive, determining the standard of education in an institution, as below :

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

60. In regards to the educational activities involving admission to a particular course and its pursuit, two aspects

bear great relevance; the first of such aspect being the adoption and setting of the minimum standards of education, which may include prescribed uniform minimum standard throughout the country, with a view to provide benchmark quality of education being imparted by various educational institutions across the country. Entry 66 of List I, therefore, contemplated the objective of maintaining uniform standards of education in fields of research, higher education and technical education.

61. The second aspect of Regulations pertaining to medical education, is with regard to the implementation of the standards as determined by the Parliament and the regulation of the activity of the education, which would necessarily entail application of the standards determined by the Parliament in all educational institutions in accordance with the local and regional needs.

In ***Modern Dental College and Research Centre Vs. State of Madhya Pradesh***[9], on a detail analysis of the legislative fields, set out in Schedule Seven, it was held that while Entry 66 of List I deals with coordination and determination of standards, on the other hand original Entry 11 of List II granted the States the exclusive power to legislate with respect of other aspects of education, except the determination of minimum standards and coordination, which was in national interest. Subsequently, vide Constitution (Forty-Second Amendment) Act, 1976, the exclusive legislative field of the State Legislature with regard to Education was removed and deleted, and the same was replaced by Entry 25 of List III, conferring concurrent powers to both Parliament and State

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Legislature to legislate with respect to all other aspects of Education, except that which was specifically covered by Entry 63 to 66 of the List I. In paragraph No.134 of the said decision, Justice Bhanumati (As Her Ladyship Then Was) construed the ambit of the words in the legislative entries and observed thus :-

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

62. Recently in ***Baharul Islam & Ors. Vs. Indian Medical Association & Ors.***[10]**,** when the legality and correctness of the order passed by the Division Bench of the Gauhati High Court, which has struck down the Assam Rural Health Regulatory Authority Act enacted by the Assam State Legislature, being subjected to challenge on the ground that it was repugnant to the provisions of the Indian Medical Council Act, the scheme of the Central Government i.e. Indian Medical Council Act with specific reference to Section 10A of the Act came up for consideration before the Apex Court. While we will be referring to the said Judgment in relation to the award of a recognised medical qualification giving the person right to be

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included in the Indian Medical Register, at present, we would only refer to the threadbare analysis by the Apex Court of the provisions of the Indian Medical Council Act, 1956 from paragraph 44 onwards and the relevant observations as regards Section 10A.

On analysis of the scheme of the IMC Act, including Sections 10A, 11, 15, 19A and Section 21, the Apex Court specifically observed thus :-

> "49. Thus, a condition precedent has been incorporated by an amendment to the IMC Act, 1956, with regard to opening of any medical institution/college in India which is, the seeking of previous permission of the Central Government in accordance with the procedure prescribed under Section 10A. In fact, this position is highlighted on a reading of Section 10B which states that if a medical qualification is granted to any student of a medical college which has been established de hors the provisions of Section 10A, no such qualification shall be recognised under the said Act. The phrase "recognised medical qualification" is defined in Section 2(h) to mean any of the medical qualifications included in the Schedules. There are three Schedules to the IMC Act, 1956. The **First Schedule** deals with recognised medical qualifications granted by the Universities or Medical Institutions in India. The **Second Schedule** speaks of recognised medical qualifications granted by Medical Institutions outside India while the **Third Schedule** deals with recognised medical qualifications granted by Medical Institutions not included in the First Schedule.
>
> 50. In this context, Sections 11 and 13 are also relevant. Subsection (1) of Section 11 states that the medical qualifications granted by any University or Medical Institution in India which is included in the First Schedule, shall be recognised medical qualification for the purposes of the said Act. Sub-section (2) of Section 11 is significant as it states that any University or medical institution in India which grants a medical qualification not included in the First Schedule, may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification In the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date. On the other hand, Section 13(1) states that the medical qualifications granted by Medical Institutions in India which are not included in the First Schedule and which are included in Part I of the Third Schedule shall also be recognised medical qualifications for the purposes of the said Act. These are medical qualifications such as LMP (Licenced Medical Practitioners) in various States of India and erstwhile provinces of India. The Third Schedule is

in respect of courses in medicine which were recognised prior to the enforcement of the IMC Act, 1956, while the courses conducted by the institutions mentioned in the First Schedule have recognition under the said Act.

51. Sections 11 and 13 have a bearing on Section 15 of the Act. Section 15 states that, subject to the other provisions contained in the Act, the medical qualifications included in the Schedules shall be sufficient qualification for enrolment on any State Medical Register. Further, except as provided in Section 25, no person other than a medical practitioner enrolled on a State Medical Register shall, *inter alia*, practice medicine in any State or shall be entitled to sign or authenticate a medical or fitness certificate or any other certificate required by any law to be signed or authenticated by a duly qualified medical practitioner. The expression "State Medical Register" as per Section 2(k) means a register maintained under any law for the time being in force in any State, regulating the registration of practitioners of medicine. The word 'medicine' is defined in Section 2(f) of the said Act to mean modern scientific medicine in all its branches and includes surgery and obstetrics, but does not include veterinary medicine and surgery. Therefore, unless a person has sufficient qualification recognised under the Schedules to the Act, he or she cannot be enrolled on any State Medical Register. In the absence of any such enrolment, such a person is barred from practicing medicine in any State".

63. In this regime, the MCI made the Postgraduate Medical Education Regulations 2000, which came into effect on 7 October 2000. These regulations determined the duration of the postgraduate medical education, degree course and diploma course after completion of MBBS. It focused upon formative and summative assessment for completion of PG course and Rule 3 highlighted the goals and general objectives of postgraduate medical education program, which shall be necessarily observed by the postgraduate teaching institution. It is relevant to reproduce Rule 3.1, which reads thus:-

"3.1 GOAL

The goal of postgraduate medical education shall be to produce competent specialists and/or Medical teachers.

i. who shall recognize the health needs of the community, and carry out professional obligations ethically and in keeping with the objectives of the national health policy

ii. who shall have mastered most of the competencies, pertaining to the speciality, that are required to be practiced at the secondary and the tertiary levels of the health care delivery system;

iii. who shall be aware of the contemporary advance and American Typewriterdevelopments in the discipline concerned;

iv. who shall have acquired a spirit of scientific inquiry and is oriented to the principles of research methodology and epidemiology; and

v. who shall have acquired the basic skills in teaching of the medical and paramedical professionals."

Further, Rule 3.2 also set out the general objectives of postgraduate training expected from students in the discipline and it necessarily contemplated the recognition of the importance of the concern speciality in the context of the health needs of the community and the national priorities in health section. It was also aimed at diagnosing and managing majority of the conditions in the speciality concerned on the basis of clinical assessment and appropriately conducted investigations, apart from advising measures for prevention and rehabilitation of patients suffering from disease and disability to the speciality. Effect on acquiring the post graduation degree diploma, the MCI expected the acquire of such qualification to function as an effective leader of a health team engaged in health care, research or training. Regulations in detail set out the components of the curriculum which included theoretical knowledge, practical and clinical skills, attitudes, including communication skills, writing thesis/ research articles and also training in research methodology, medical ethics and medical legal aspects. What is relevant is Rule 6 of the Regulations of 2000 applicable to an institution,

intending to start a postgraduate medical education course or in increasing the annual intake capacity and this required prior permission of the Central Government under section 10A of the Act. The permission so granted was contemplated to be for four and three years, respectively. The proviso appended to Rule 6 read thus:-

> *"Provided that it shall be incumbent upon Medical Colleges/ Medical Institutions to make an application for starting of post-graduate medical education courses within three years of grant of recognition, i.e. three years from the date of inclusion of the MBBS qualification awarded by the Medical College in the First Schedule of the Indian Medical Council Act, 1956. Failure to make the application for starting of Postgraduate courses within the stipulated time shall entail the withdrawal of recognition of MBBS qualification.*
>
> *Provided further that a Medical College/Medical Instiutution that makes an application for starting of a Postgraduate course in the eventuality of disapproval shall be granted two more opportunities for the succeeding yhears to make an application. Failure to obtain permission of the Central Government shall entail the withdrawal of Recognition of MBBS qualification.*
>
> *Provided further that above shall be applicable to the scheme submitted from the academic year 2020-21 onwards, in order to provide time to the existing colleges to apply."*

Rule 6(2) made it mandatory for the institution to apply for recognition of the postgraduate medical qualification to the Central Government through the affiliating University, when the first admitted batch shall be due to appear for examination to be conducted by the affiliating University. In case, if any deficiencies are to be found in the assessment, it is given 30 days time to cure the same, but such an opportunity shall be availed only twice. It is only upon the Committee, ensuring satisfactory compliance shall recommend recognition to the said course and in all other cases, the prior permission shall be deemed to have been lapsed. A serious consequence would ensue and failure to seek timely recognition as it would result

in stoppage of admission in the PG course, and even it may call for imposition of exemplary penalty and/or stoppage of other PG medical courses of the institution or even debarring it from making any application for starting or increasing the seats in the PG courses for specified period. Clause (4) of Rule 6 clearly prescribe that the recognition granted to oppose graduate course shall be for a maximum period of five years, upon which it shall have to be renewed, and in this period of five years, the college should have all pre and para clinical post graduate courses.

64. Rule 8 of Regulations 2000 clearly stipulated that the medical institutions recognised under IMC Act, 1956 for running PG courses prior to commencement of IMC (Amendment Act 1993), and the college recognised for running MBBS shall be eligible for starting a postgraduate medical education course or to increase its capacity. By virtue of clause 8(1), even if the Medical College was not yet recognise for the award of MBBS degree under the IMC Act 1956, it could apply for starting postgraduate medical education course in preclinical and paraclinical subjects only along with the admission to fourth batch of MBBS course, however, as far as clinical subjects like psychiatry anesthesiology, oncology, general surgery, etc. It shall be permissible at the time of renewal, i.e. along with the admission of fifth batch for the MBBS course. In addition, it also prescribed the maximum number of students for postgraduate medical course, which was to be determined upon the facilities available in the Department in terms of infrastructure, teaching staff, and clinical teaching material. .

65. The PG Regulation of 2000 also provided for the procedure for selection of candidate for post graduate courses with the provision of common counselling. The period of training for award of various postgraduate diplomas or degrees was also prescribed with regards to the stream,e.g. in case of Doctor of Medicine (M.D), the period of training was prescribed that three completed years, but in case of students possessing a recognised two year PG diploma in the same subject, then the period of training shall be two years. For a diploma, the period of training for obtaining PG diploma was prescribed as two completed years, including the examination period. In addition, Rule 11 of the Regulations also prescribed the requirement of Departmental training facilities, by providing that a Department having independent academic entity of a teaching institution, comprising of one or more units, having prescribe strength of faculty, staff, and beds shall be recognised for postgraduate training.

The Regulation then prescribed the Staff – Faculty along with their experience in teaching as well as the qualifications prescribed by the Regulation. The minimum staff required in First Unit contemplated one Professor, one Associate professor, one Assistant Professor, one Senior Resident, and two Junior Residents. Further, it is also provided that only those faculty members who possess eight years teaching experience of which at least five years is as an Assistant Professor or above gained after obtaining PG degree shall be recognised as postgraduate teachers. Clause 11.2 of the Regulations also specified the minimum requirements of teaching staff in post graduate institution, department wise, and this included

tutor/demonstrator. Apart from this, it was also prescribed that a department to be recognised for training of post graduate students shall have at least 60 beds each of general medicine, general surgery, obstetrics and gynecology and 30 beds, each for other specialities for degree and diploma courses and 20 beds each in case of super speciality courses. Parameters for outpatient departments as well as laboratory facilities, equipment is also set out in the regulation in detail.

66. The number of postgraduate students to be admitted with reference to teacher student ratio for clinical subjects in government, college and non-government College with 15 years standing was also specified in Regulation 2000. The manner in which the bed strength will be computed so as to make proper training facility available to the postgraduate students is also clearly set out. The Regulations also provided for the details of the implementation of training programmes for the award of PG degree and diploma, and as far as degree is concerned, it clearly contemplated that the teaching and training of students shall be through lectures, seminars, Journal Clubs, Group Discussions, Participation in laboratory and experimental work and involvement in Research Studies in the concerned speciality with exposure to the 'Applied aspects' of the subject relevant to clinical specialities. In clinical disciplines, teaching and training included graded responsibility in the management and treatment of patients coupled with Clinical Meetings, practical training in Diagnosis and Medical and Surgical treatment as well as training in Basic Medical Sciences and in all allied clinical specialities. For

conferring of the diplomas, there was also a requirement of lectures, seminars, journal, clubs, group discussions, and participation in clinical and clinico-pathological conferences, practical training to manage independently, common problems in the speciality and training in the Basic Medical Sciences.

In addition, a postgraduate student of post-graduate degree course is required to present one poster presentation, one paper at a national/state conference and to present one research paper for publication during his postgraduate studies so as to make him eligible to appear for postgraduate examination.

The manner in which the examination shall be carried out as degree course and diploma courses is also set out and the diploma examination in any subject is to include theory, practical/clinical, and oral.

67. The Indian Medical Council Act, 1956 under which MCI was constituted as the Apex body for determining the standards of medical education, both at graduate and post graduate level, was repealed with the enactment of National Medical Commission Act, 2019 with the statement of objects and reasons enumerated below :-

> ***"Statement of Objects and Reasons****. - Medical education is at the core of the access to quality healthcare in any country. A flexible and well-functioning legislative framework underlying medical education is essential for the well-being of a nation. The Indian Medical Council Act, 1956 which was enacted to provide a solid foundation for the growth of medical education in the early decades, has not kept pace with time. Various bottlenecks have crept into the system with serious detrimental effects on medical education and, by implication, on delivery of quality health services.*
>
> *2 The Department-Related Parliamentary Standing Committee on Health and Family Welfare in its Ninety-*

second Report has offered a critical assessment of medical education in India. The Standing Committee has recommended for a decisive and exemplary action to restructure and revamp the regulatory system of medical education and medical practice and to reform the Medical Council of India in accordance with the regulatory structure suggested by the Group of Experts, chaired by Dr. Ranjit Roy Choudhary, which was constituted by the Central Government. The Standing Committee endorsed separation of functions by forming four autonomous boards and recommended appointment of regulators through selection rather than election and to bring a new comprehensive Bill in Parliament for this purpose, as the existing provisions of Indian Medical Council Act, 1956 are outdated.

3 The Hon'ble Supreme Court in its judgment dated 2nd May, 2016 in the Civil Appeal No. 4060 of 2009 titled Modern Dental College and Research Centre and Others versus State of Madhya Pradesh and Others has directed the Central Government to consider and take appropriate action on the recommendations of the Roy Choudhary Committee. Keeping in view of these recommendations, the National Medical Commission Bill, 2017 was introduced in the Lok Sabha on 29th December, 2017 and subsequently referred to the Department related Parliamentary Standing Committee for examination and report. The Standing Committee presented its 109th report on the said Bill. Based on the recommendations of the Department related Parliamentary Standing Committee, the Government had brought in necessary official amendments on 28th March, 2018 to the Bill pending in Lok Sabha. However, the Bill could not be taken up for consideration and passing during any of the subsequent sessions of the Parliament and has lapsed on dissolution of the 16th Lok Sabha.

4 Accordingly, it is proposed to introduce the National Medical Commission Bill, 2019 which, inter alia, seeks to provide for —

(a) constitution of a National Medical Commission for development and regulation of all aspects relating to medical education, medical profession and medical institutions and a Medical Advisory Council to advise and make recommendations to the Commission;

(b) constitution of four Autonomous Boards, namely: -

(i) the Under-Graduate Medical Education Board to regulate medical education at under-graduate level and to determine standards thereof;

(ii) the Post-Graduate Medical Education Board to regulate medical education at post-graduate level and to determine standards thereof;

(iii) the Medical Assessment and Rating Board to carry

out inspections and to assess and rate the medical institutions; and

(iv) the Ethics and Medical Registration Board to regulate professional conduct and promote medical ethics amongst medical practitioners and medical professionals and to maintain a national register of all licensed medical practitioners and a separate national register of Community Health Providers;
(c) holding of a uniform National Eligibility-cum-Entrance Test for admission to under-graduate and post-graduate super-specialty medical education;
(d) holding of a uniform National Exit Test for granting license to practice medicine as medical practitioners and for enrollment in the State Register or the National Register and it shall also be the basis for admission to the post-graduate broad-specialty courses;

(e) permission for establishment of new medical college, for starting post-graduate courses and to increase number of seats to be obtained by medical institutions;
(f) recognition of medical qualifications granted by universities and medical institutions in India and outside India and also for recognition of medical qualifications granted by statutory and other bodies in India as listed in the Schedule;
(g) maintenance of a National Register containing the name, address, recognized qualifications possessed by a licensed medical practitioner;
(h) grant of limited license to practice medicine at mid-level to persons connected with modern scientific medical profession to be called Community Health Providers;
(i) Constitution of a National Medical Commission Fund for crediting Government grants, fees, penalties and charges;
(j) the repeal of the Indian Medical Council Act, 1956 and for dissolution of the Medical Council of India.

5 The Bill seeks to achieve the above objectives."

68. Under the Act of 2019, the definition of the term "Medical Institution" was widened to include Affiliated colleges and Deemed to be Universities. It also introduced the National Medical Commission to be constituted by the Central Government to exercise the power conferred upon and to perform the functions assigned to it under the Act, with its

head office at New Delhi. The Commission consisted of persons to be appointed by the Central Government to be headed by a Chairman and to include 10 ex-officio members and 22 part-time members along with the presence of ex-officio members as well as part time members as set out in Section 4 of the Act. The powers and functions of the Commission are set out in Section 10, its primary functions being :-

> *(a) lay down policies for maintaining a high quality and high standards in medical education and make necessary regulations in this behalf;*
>
> *(b) lay down policies for regulating medical institutions, medical researches and medical professionals and make necessary regulations in this behalf;*
>
> *(d) promote, co-ordinate and frame guidelines and lay down policies by making necessary regulations for the proper functioning of the Commission, the Autonomous Boards and the State Medical Councils;*
>
> *(f) take such measures, as may be necessary, to ensure compliance by the State Medical Councils of the guidelines framed and regulations made under this Act for their effective functioning under this Act;*
>
> *(h) lay down policies and codes to ensure observance of professional ethics in medical profession and to promote ethical conduct during the provision of care by medical practitioners;*
>
> *(i) frame guidelines for determination of fees and all other charges in respect of fifty per cent of seats in private medical institutions and deemed to be universities which are governed under the provisions of this Act;*

In addition, the Act of 2019 also constituted Medical Advisory Council under Section 11 comprising of a Chair person and other members as set out under Section 11, being designated as a primary platform through which the State and Union Territories were allowed to put forth their views and concerns before the Commission and which was to render

assistance in shaping overall agenda, policy and action relating to medical education and training. In addition, the Council has been assigned with the function of advising the Commission on measures to determine and maintain and to coordinate maintenance of, the minimum standards in all matters, relating to medical education, training and research. The Council is also a Body competent to advise the commission on measures to enhance equitable access to medical education.

69. The National Board of Medical Education (NBME) as defined under Section 2(l) of the Act, was constituted as a body, which is competent to grant broad speciality and super speciality qualifications referred to in the Board, whereas "Post Graduate Medical Education Board" is another authority constituted under Section 16 of the Act to perform the functions assigned to it along with the undergraduate Medical Education Board, the Medical Assessment and Rating Board and the Ethics and Medical Registration Board, all having received recognition as autonomous body to carry out the functions of the Act.

70. Recognised Medical Education, according to Section 2(r) of the Act means a medical education recognised under Section 35 or Section 36 or Section 37 or Section 40 as prescribed in Chapter 6 of the Act.

Section 35 of the Act prescribe for medical qualification granted by any University or medical institution in India shall be listed and maintained by the Under Graduate Medical Board or Post Graduate Medical Board, as the case may be, in such

manner as may be specified by the regulations and such medical qualification shall be a recognised medical qualification for the purposes of the Act.

Sub-section (2) of Section 35 is an exception which reads thus:-

> *"(2) Any University or medical institution in India which grants an undergraduate or postgraduate or super-speciality medical qualification not included in the list maintained by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, may apply to that Board for granting recognition to such qualification."*

The said Section further prescribe that such an application shall be examined within period of six months and if it is decided by UG/PG Medical Education Board to grant recognition to a medical qualification, it shall be included in the list maintained and also specify the date of effect of such recognition, but where it is decided not to grant recognition to a medical qualification, an Appeal shall lie to the Commission in the manner prescribed. What is relevant is sub-section (8) of Section 35 which reads thus:-

> *"(8) All medical qualifications which have been recognised before the date of commencement of this Act and are included in the First Schedule and Part I of the Third Schedule to the Indian Medical Council Act, 1956 (102 of 1956), shall also be recognised medical qualifications for the purpose of this Act, and shall be listed and maintained by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in such manner as may be specified by the regulations."*

71. In the wake of the aforesaid provision in form of sub-section (8) of Section 35, it is the argument advanced on behalf of CPS that since the medical qualification granted by it was recognised before the commencement of the Act of 2019

being included in First Schedule of the IMC Act, 1956, it is automatically recognised as a medical qualification under the Act of 2019, as a qualification which has received recognition and considered to be duly recognised by the Post Graduate Medical Education Board (PGMEB).

This is precisely the bone of contention between the rival contenders, CPS as well as the Colleges and students on one hand and IMC/NMC/Central Government and State Government on the other.

72. Under the Act of 2019, the Central Government has assumed great significance, as under Section 45, the Central Government is competent to issue directions to the Commission and Autonomous Boards in exercise of their powers and discharge of their functions and they are bound by such directions issued by the Central Government, though by introducing a proviso, they are to be afforded an opportunity to express their views before any direction is given. Similarly, the Central Government is also empowered to give directions as it deem necessary to a State Government for carrying out all or any of the provisions of the Act.

Section 49 is in form of a Saving Clause in respect of a student who was studying for a degree/diploma or certificate in any medical institution immediately before commencement of the Act and he shall be allowed to study and complete his course and such institution shall continue to provide instructions and conduct examination for such students in accordance with the syllabus and studies as existed before and such students shall be deemed to have completed the course of study under the Act of 2019 and shall be awarded degree,

diploma or certificate under the Act of 2019.

This provision will have to be read with Section 60 which is a provision for repeal and saving and sub-section (2) thereof reads thus:-

> *"(2) Notwithstanding the repeal of the Act referred to in sub-section (1), it shall not affect,—*
>
> *(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or*
> *(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or*
> *(c) any penalty incurred in respect of any contravention under the Act so repealed; or*
> *(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Act had not been repealed."*

73. The Central Government is empowered to frame rules for carrying out the purpose of the Act, as prescribed in Section 56, whereas the NMC which has now assumed the role of erstwhile MCI, is empowered to make Regulations consistent with the Act in the wake of the power conferred upon it u/s.57.

The power of making of Regulation extend to the quality and *standards to be maintained in medical education as well as* the manner of regulating medical institutions, medical researches and medical professionals under clause (b) of sub-section (1) of section 10. In addition, the Regulation also extended to *:-*

> ***(t)*** *the standards of medical education at the postgraduate level and superspeciality level under clause (a) of sub-section (1) of section 25;*
> ***(u)*** *the curriculum at postgraduate level and super-speciality level under clause (b) of sub-section (1) of section 25;*
> ***(v)*** *the manner of imparting postgraduate and super-speciality courses by medical institutions under clause (c) of sub-section (1) of section 25;*

> ***(w)*** *the minimum requirements and standards for conducting postgraduate and super-speciality courses and examinations in medical institutions under clause (d) of sub-section (1) of section 25;*
> ***(x)*** *the standards and norms for infrastructure, faculty and quality of education in medical institutions conducting postgraduate and super-speciality medical education under clause (e) of sub-section (1) of section 25.*

74. We have already highlighted the background canvass in which the College of Physicians and Surgeons was established in or about 1912 considering the need for qualification in medicine and surgery, which was intended to be cost effective. In the year 1914, the Ministry of Health, Government of India recognized 9 qualifications granted by College of Physicians and Surgeons.

With the enactment of the Indian Medical Council Act, 1933, the courses run by CPS came to be included in the First Schedule and they continued to remain there even under the IMC Act, 1956. Admittedly, the courses recognized and appearing under IMC Act of 1956 were only 9 diploma with one MCPS in relation to 5 medical colleges viz. Grant Medical College, Seth G.S. Medical College, T.N. Medical College, Bombay, B.J. Medical College, Pune and B.J. Medical College, Ahmedabad.

Sub-Section (1) of Section 11 of the IMC Act, 1956 only recognized the medical qualifications granted by University or Medical Education Institutions in India, included in the First Schedule, but if a qualification was not included in the First Schedule, the University/Medical Institution was permitted to apply to have such qualifications included therein.

75. There is a succinct distinction between Sub Section (1) and Sub-Section (2) of Section 11 of the Act of 1956 and this was also conspicuously found in the 1933 Act. The qualification appearing in the Schedule I of the IMC Act, 1956 was restricted only qua a particular university or institute, which received recognition from MCI. But every new college which intended to impart education in medicine was required to apply for inclusion of its qualifications. In the wake of Section 11 (1), the recognition granted to 9 post graduate courses were restricted to five medical colleges and, therefore, if the medical qualification to be awarded by CPS was to be conferred by conducting courses in any other medical college/institution other than the 5 mentioned in the Schedule, it necessarily had to follow the route of Sub Section (2) of Section 11.

In that contingency, the obligation under Section 16 to 18 kicked in, which contemplated the supervision of the Council, as it was mandatory for every University or Medical Institution in India, which was competent to grant recognized medical qualification to furnish such information as regards the courses of study and examination to be undergone to obtain such qualifications and it was competent for the Committee to be appointed by the Council to inspect any institution, college, hospital where such medical education was imparted or the examination was conducted by the University for the purpose of recommending to the Central Government, to accord recommendation to the medical qualifications granted by that University or medical institution.

76. The contention raised on behalf of CPS that since the courses recognized by it were in existence prior to 1933 and automatically they are saved under Clause (1) of Section 11 of the Act is an eye wash for the reason that merely because degree/qualification is recognized which was restricted only to 5 colleges , did not permit CPS to confer degree by running courses in any other college/institution, which is non-compliant with Section 10A of IMC Act, since such an institution would be covered under sub section (2) of Section 11. In addition, with effect from 27/08/1992 by virtue of Section 10A it was not permissible for any person to establish a medical college or even a medical college to open a new or higher course of study or training or increase its admission capacity except with the previous permission of the Central Government in accordance with the said Section.

Section 15 of the IMC Act, 1956 which recognized the medical qualifications to be the qualification sufficient for enrollment on any State Medical Register, one can discern that it is a right conferred only upon those who possess the medical qualifications, which are recognized under Section 11. With effect from 16/06/1964 Section 19A is introduced in the Act which permitted the Council to prescribe the minimum standards of medical education required for granting recognized medical qualifications by Universities or Medical Institutions in India.

77. A conjoint reading of the aforesaid scheme would clearly establish that the medical qualifications granted by the University or Medical Institutions in India were recognized by enlisting them in First Schedule, where, College of Physicians

and Surgeons, Bombay, was one such medical institution, but since this qualification was imparted through 5 colleges, when a new college was to confer such qualification, it necessarily had to gain entry in the scheme through the door of Section 10A.

78. It is evidently clear to us that CPS started expanding its ambit beyond the five colleges, when it started affiliating and/or approving several hospitals beyond the five hospitals through which it was imparting its courses and by admitting the students in these Colleges, it conferred the degrees/diplomas, which found place in Schedule 1 of the IMC Act, 1956.

It is brought to our notice that as on date, CPS is conducting 9 courses which had received recognition under First Schedule of IMC Act, in more than 200 private hospitals, which at no point of time had obtained permission to impart the course of study or training so as to enable the students to qualify them for an award of any recognized medical qualification which would be covered within Section 15 of the Act.

79. An attempt on part of the CPS to submit that the qualification awarded by it was duly recognised under Section 11 of the Act of 1933 as well as the Act of 1956 and, therefore, when the new regime of National Medical Commission Act, 2019 came into operation, in the wake of sub-section (8) of Section 35, the qualification conferred by CPS automatically gained entry in the new regime. We find this argument to be fallacious on two counts; the first reason being that though the qualification accorded by CPS found its way in Schedule 1 of the Act of 1956, it was not open for the CPS to affiliate colleges

after colleges, by spreading its wing throughout the State, without giving any consideration to the quality of the education, which it was offering. Any college/institution established under the old regime of the Medical Council of India could not have functioned without adhering to the Norms/Regulations framed by the MCI and now in the new regime by the National Medical Commission. Sub-section (8) of Section 35 though continue recognition of those courses, which had received recognition as medical qualification for the IMC Act, 1956 and it was permissible to continue its existence in the new regime, it only contemplated in the manner specified by the Regulation. We have reproduced the new Regulations of 2023 and it is very clear that till the new Regulations came into force, the medical eduction i.e. graduate/postgraduate studies were governed by the existing Regulations of the MCI brought into existence in exercise of the power conferred on it to maintain the standard of medical education and maintain its uniformity throughout the country. Further, even Section 60 of the MMC Act, which is the provision in form of 'Repeal and Saving' also do not assist the CPS, as sub-section (4) of Section 60 of the NMC Act, 2019 reads thus:-

> *"(4) Notwithstanding the repeal of the aforesaid enactment, any order made, any licence to practice issued, any registration made, any permission to start new medical college or to start higher course of studies or for increase in the admission capacity granted, any recognition of medical qualifications granted, under the Indian Medical Council Act, 1956, which are in force as on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued or granted under the provisions of this Act or the rules or regulations made thereunder."*

In the wake of the aforesaid saving clause on repeal of IMC Act, 1956, when MCI stood dissolved, what was saved was the recognition of medical qualification granted under the IMC Act, 1956, which was in force as on date of commencement of the Act. It is worth to note that when the courses of CPS were removed from Schedule I in the year 2009, it could not have been restored with the retrospective effect in the year 2017 and, since, they were courses of new learning, the qualifications to be offered through the said courses must find its way in the Schedule only through sub-section (2) of Section 11 of the Act of 1956. It is only in this manner the qualification will receive recognition under the IMC Act and in no other way.

80. When CPS expanded its horizon to distinct colleges and also to 36 courses being run under its aegis by affiliating several medical colleges resulted in a PIL being filed by Dr. Arun Date On 02/02/2009 numbered as PIL No.102/2009 where a serious objection was taken to this expansion. The PIL was specifically founded on the ground that MCI right from 1996 had recommended to Union of India to de- recognize the courses and delete them from the Schedule attached to IMC Act, but Union of India remained tight-liped.

The MCI, responding to the said PIL filed an Affidavit through its Deputy Secretary on 23/03/2009 by asserting itself to be a statutory authority created and constituted by the Central Government under the MCI Act, 1956, with the object *interalia* to provide medical education in the country and adopted a stand that it is authorized to prescribe

standards in the medical education as well as to frame Regulations on the said subject, having statutory force and binding character.

By relying upon Section 10A of the Act, the Regulation captioned as "Opening of a new or higher course of study or training (including post-graduate course of study or training) and increase of admission capacity in any course or study or training (including the postgraduate course of study or training) Regulation 2000 was relied upon and it was specifically stated as below :-

> "20. It is respectfully submitted that the amended provisions and the scheme of the Act make it apparent that a medical qualification from a medical college, which is recognized by the Medical Council of India and a notification in this regard is issued, is only considered to be a recognized medical qualification and only those possessing such a recognized qualification are entitled to permanent registration on the State Register. And further any qualification obtained after pursuing the course in an unrecognized qualification for the purposes of the Act. It is respectfully submitted that the provision of section 10B of the Act makes it absolutely clear that each college imparting medical education is required to seek recognition from the Medical Council of India."

81. In no uncertain terms the MCI made the following statement:

> "23. It is thus, most respectfully submitted that in terms of IMC Act and the statutory regulations made there under, each of the medical college affiliated to a university is obliged to get recognized each of the medicine course being imparted in a medical college separately and independently.
>
> 24. It is respectfully submitted that qua postgraduate and super specialty courses in medicine, more stringent standards are required to be maintained than at the under graduate level. It becomes all the more necessary that institutions/college seek recognition for their MBBS, PG and super specialty courses individually."

"26. It is submitted further that as per section 11 of the IMC Act, 1956, it is the institution/College imparting training in a particular medicine course which has to make a formal application for recognition to the university concerned. Once such an application is received by the University, it is to be forwarded to the Central Govt. Ministry of Health & Family Welfare, New Delhi. The Central Govt. in turn forwards the request to the MCI, who as per the laid down procedure to conduct an inspection of infrastructural, teaching and other physical facilities available at the institute at the time of and alongwith the final examination of the University."

82. With regard to the specific grievance raised in the PIL as regards CPS running distinct courses, which are totally unrecognized as they are never been permitted to be run or recognized either by the Central Government or MCI, the allegation was met with the following response :-

"31. It is further the case of the petitioners that the respondent No. 4 institution while starting DMS, DA, DORL, D ORTHO, TDD, DMRE, DDV, DFP, DPM, DCH, DGO, DPB unrecognized diploma courses has not applied either to the Central Government or to the MCI as provided under section 10A of the IMC Act 1956. All the aforesaid unrecognized courses have been started by the respondent No. 4 institution after 1993 and therefore the degree and the qualifications conferred upon students is of no use to them in as much as such students are not allowed to practice modern medicine with the use of such unrecognized qualification. There is no machinery made available either by State Government and Central Govt. or MCI to find out how many persons are practicing without recognized qualification. The respondent No. 4 institutions after introduction of section 10A, and 10C in IMC Act, 1956 has no right to establish and or start postgraduate medical courses. In view of this, postgraduate diploma courses being run and conducted by respondent No. 4 institution are unauthorized and thus have no status and is expressly forbidden by the provision of law.

32. It is respectfully submitted that the qualifications included in the First Schedule to the Indian Medical Council Act, 1956 as awarded by respondent No.4 were recommended for derecognition by the answering respondent-MCI vide its letter dated 16.01.1998 to the Central Govt. Ministry of Health & Family Welfare, New Delhi and Governing Body of the Council has approved the decision of the Post Graduate Committee of answering respondent in its meeting held on 23.10.1997."

83. The Affidavit highlighted the entire correspondence entered with the Government, Ministry of Health and Family Welfare, New Delhi as regards consideration of the recommendations qua Respondent No.4 i.e. CPS and it was categorically stated that various diploma as well as degree courses as awarded by Respondent No.4, has already been recommended for de-recognition by MCI and they were also directed to stop admission in these courses. It was also reiterated that each medical college is obliged to provide the minimum required infrastructure teaching and other facilities for running each of the medicine course in terms of MCI Regulations and unless the same is ensured and it has been ascertained by MCI by causing an inspection of the college so as to make a positive recommendation to the Central Government for recognition of the said course, the medicine qualification would neither be said to be recognized nor would be included in Schedule of IMC Act.

In the concluding Para , MCI unhesitatingly deposed as below :-

> "48. That under these circumstances, it is the most humble submission of the answering respondent NO.3-MCI that the present case of the petitioner would deserve to be considered by this Hon'ble Court in the light of the above mentioned principles of law laid down by the Hon'ble Supreme Court, in case of MCI Vs. State of Karnataka."

84. On 18/08/2009, recording that no decision has been taken for several years, after the recommendation was made to the Government of India by the MCI, a statement made on behalf of the Under Secretary, Ministry of Health and Family Welfare, Government of India, was recorded to the effect that

the recommendations of the MCI shall be considered and final decision shall be taken within four weeks from today.

This statement was taken to its logical end when on 02/12/2009, in exercise of powers conferred by Sub Section (4) of Section 19 of the IMC Act, 1956, the Central Government made the amendments in First Schedule of the Act thereby deleting the entries appearing under the Heading "College of Physicians and Surgeons, Bombay", alongwith the recognized medical qualifications mentioned in Column No.2.

The corrigendum was, thereafter, issued on 03/02/2010 giving effect to the said Notification from 02/12/2009.

85. Reading of the Affidavit filed by Ashok Harit, Deputy Secretary , MCI, as early as in 2009, make it clear that the MCI even then was of the opinion that the courses run by CPS cannot continue as a decision was taken by it in its meeting held on 23/10/1997, which was based upon the visitation report and on the following reasons :

> *i) It is not a college in conventional term, but functioning on pattern of Royal College of Surgeons, England and has fellow members;*
>
> *ii) It is basically an examining body and not college in itself;*
>
> *iii) It is not a teaching institution having itsown hospital and teaching faculty;*
>
> *iv) The colleges imparting the degree/diploma are not affiliated to University nor is the CPS.*

MCI through its General Body, therefore, recommended to the Central Government to remove the medical qualifications because the institution did not have its own hospitals, teachers, possess requisite recognized post-graduate qualifications and experience for teaching of the

students and nor there is a proper mode of selection for the courses being conducted and moreover the status of the institution does not fall in any category of the 'Institution' functioning in India.

It is because of the stout stand adopted by the MCI, MOHEF, the Government of India deleted the courses run by CPS from Schedule 1 with effect from 02/12/2009.

86. Despite this fate, CPS again found its feet and revived its existence, this time with the bang, 39 courses being included in Schedule I. This success had its genesis in recommendation of the two committees; one being the Committee headed by Dr.Deviprasad Shetty, and another report authored by B.D. Athani.

87. In terms of the order dated 05/08/2016 passed by the Government of India, a Committee was constituted to have a fresh look at the courses being offered by the CPS with Dr. Devi Shetty from Narayan Hrudayalay being appointed as its Chairman. The other two members of the Committee comprised of Director of Medical Education and Research Dr. Pravin Shringare, and Dr.Sita Naik, former Dean of SGPGIMS Lucknow. The Committee was constituted to examine the following aspects :-

a) The standard/curriculum of CPS courses;
b) How are the participating institutions accredited;
c) An assessment of the services rendered by CPS pass out;
d) Recommendation for recognition, if any.

The report of the Committee is placed before us by the PIL Petitioner as well as CPS and we have perused the same.

88. On its reading, we find that the Committee engaged itself in justifying the necessity of the courses – Why CPS diploma ?

As if with a predetermined mind, in the preface of its report, the Committee compared the scenario in India with the scenario in USA, when it record that the latter has approximately 20,630 undergraduate seats in medical colleges 40,070 PG seats, whereas, India as 53,300 UG seats and only 14500 PG seats in clinical subjects.

In its preamble itself, the Committee record thus :

> "India desperately needs at least 40,000 PG seats made available urgently to address the crisis in delivering health care in rural India. The time has come for us to relook at the quality of healthcare available at the community health centres (CHC) Taluka and District level hospitals run by the government. The entire emphasis on postgraduate medical education must concentrate on building adequate manpower for the 5,000+ community healthcare centers and over 1,000 district / taluka hospitals. These hospitals need to be adequately staffed with the requisite medical specialists if we are to reduce the maternal mortality, infant mortality, address all the surgical emergencies such as accidents, abdominal surgical emergencies, and provide facilities to diagnose acute and chronic illnesses with all the imaging modalities. Only then will the quality of healthcare in India will improve. According to the data from the Ministry of health, vacancy for the medical specialists - who are critical to reduce The IMR and MMR - at the community health centres across India is over 80%. Addressing this shortage should be the top priority of our government."

> "Doctors with diplomas can transform rural health care and these diploma training should be given as part of a career progression for young doctor and not a dead end. Incentive for young graduates to take up the diploma training by giving priority in MD/MS/DNB selection would draw many into this stream. They would also be entitled to get a year of exemption during MD/MS courses which is a norm today according to MCI guidelines."

89. We had to literally wade ourselves through this report, as we fail to understand as to what data was available with the Committee to make the aforesaid observation and to what

extent the preface on which the Committee started its work can be trusted.

Under the caption, "Why CPS Diploma", we find the following reasons assigned:-

> *"1) All government hospitals with 200+ beds and single specialty hospitals with 100+ beds can start diploma courses in broad specialities like Gynaecology, Paediatrics, Anaesthesia, Radiology and Orthopaedics. Also, well equipped, busy and NABH accredited hospitals managed by private sector can also conduct diploma courses under CPS.*
>
> *2) Emphasis can be on >200 bed hospitals in tier two cities with experienced teachers, not having DNB courses, to start diploma courses, since students graduating from small cities are more likely to settle locally.*
>
> *3) CPS will conduct the examination at the end of two years and offer the diploma degree which is recognised by the MCI so that the doctor with diploma can practice across the country.*
>
> *4) To prevent corruption in conducting diploma courses in private hospitals, entrance would be entirely by NEET, fees be fixed by the government based on the guidelines of fees for DNB courses after discussing with providers of service addressing the financial viability of conducting diploma courses."*

We find the aforesaid observations to be not germane to the reference made to the Committee and once again we conclude that the Committee has not backed its conclusion by any official data.

90. Surprisingly, on other two aspects i.e. the standard/ curriculum of CPS course and the accreditation of the participating institution, the Committee has once again without taking into consideration the existing Regulations framed by the MCI, an apex body to coordinate overall medical education has randomly concluded as below :-

> *"From discussions with the CPS office bearers and teachers, and on perusal of the curriculum the Committee found that the curriculum is on par with diplomas offered by MCI. CPS offers two year diploma courses and 3 year fellowship courses. Many*

new courses have been started that probably do not exist in MCI system. Such courses were started with local perception of need in Maharashtra. The Committee also found that there is a system of recognizing the need in a particular geography and a robust system in place to start and implement the courses.

As and when the various diplomas for various courses are developed, they are submitted to Medical Education department for recognition. They are evaluated and recognition has been given by the state government. The list is provided in Annexure A.

Will be gainfully employed during the waiting period preparing for the entrance exam for PG MD/MS seats."

When the Committee record that the curriculum of CPS is on par with the diploma offered by MCI, we do not find any analysis being carried out to compare the curriculum and, therefore, a bald and bold statement must be viewed with great caution. In any case for grant of equivalence to the qualifications of CPS, the PG Regulations, 2000 ought to have been the guiding star, but we do not find any reference to the same.

The Committee also record that CPS offers various courses, which do not exist in MCI system and we wonder what prompted the Committee to analyse the credibility of this course , which power is in fact only with the MCI, an Apex body constituted under the Act of Parliament.

91. Another strange thing which had attracted our attention is on point B – 'How are the participating institutions accredited.'

Under this caption, the Committee record that out of 165 participating institutions in Maharashtra, 19 are Government hospitals and institutions that are recognized by the Committee made up of MCI recognized teachers, based on

bed strength, inspection and on ascertaining that all facilities/ infrastructure is available.

It also recorded that the programme has been extended in various States, but what is clearly amiss in the Report is the serious objection raised by MCI, when it addressed a communication to the Central Government for de-recognizing the courses rendered by CPS on the ground that the institutions affiliated to CPS are not competent to impart the said curriculum without it having approval of the Central Government when the courses were started.

92. Merely on the basis that the CPS courses are non-commercial with affordable fee structure and they follow a Centralised Admission Process could be no ground to validate the qualifications imparted by it as a recognised qualification in light of the specific stand of the MCI that it do not comply with the Regulations and merely because it will benefit Rural Health Care, the recommendation to recognise the two year diplomas of CPS on the basis that they are equivalent to the diploma courses from MCI, according to us, is no justification for recommendation of CPS for recognition of its courses.

When the Committee record that the State Government recognised diplomas are considered at par with MCI diplomas, one fail to understand on what basis the parity is conferred as it would warrant examination of curriculum, duration of course etc, but in its absentia, a statement made in the report of the Committee is fallacious.

Moreover, when Devi Shetty Commission was constituted and it held its meeting, the diplomas offered by CPS were not in existence, as the courses run by it were

already de-recognised in the year 2009 itself, so one wonder as to what did the Committee actually compare. The report of the Committee recommended 39 diploma courses, of which 22, are not in the IMC Schedule and despite this, the Shetty Commission report has concluded that the diplomas are on par with the courses run by MCI.

For this reason, we find substance in the submission of Mr.Thorat that the basis of recommendation of Devi Shetty report itself proceeds on an erroneous assumption of equivalence.

93. Another report is of the Athani Committee, which was constituted by the Ministry of Health and Family Welfare by its letter dated 17/1/2018 to be headed by Dr.B.D. Athani, as a Chairman along with five members with Dr.B. Shrinivas, Assistant Director General, Medical Education, MOHFW as its Member Secretary.

The terms of Reference (TOR) for the Committee once again was nothing but a feeble attempt for a broader review of the CPS courses, which was already undertaken by the Devi Shetty Committee and the Terms of Reference for the Committee read as below :-

> *"(i) To examine the Minimum Standard Requirements (MSRs) fixed by CPS, Mumbai for the accreditation of participating institutions.*
> *(ii) To study the mechanism adopted by CPS, Mumbai for inspection/certification of the institute.*
> *(iii) To study the possibilities for expanding CPS courses over the years.*
> *(iv) To study the mechanism to monitor the standard of CPS courses being run at the accredited institutions and mode of final examination.*
> *(v) To study the nomenclature and curricula of the Diploma courses of the CPS, Mumbai.*
> *(vi) Any other matter related to promotion of CPS courses in India.*

94. The report of the said Committee is perused by us. Surprisingly, the genesis of the report is to be founded in the Minimum Standard Regulations (MSR) formulated by CPS itself.

When we specifically asked Mr.Dada about this MSR, we are told that CPS has adopted a mechanism for quality assurance in teaching and learning and this includes the following :-

> *"1. Maintenance of Lecture Attendance Card (Performa of Lecture Attendance Card is enclosed as Annexure 11)*
> *2. Maintaining Residents LOG BOOK by students (Annexure 12)*
> *3. Monitoring of Standard of CPS courses: An overall monitoring of the student will be done through software based Electronic Paperless Device (EPD) from 1st August 2018. CPS at the time of enrolment will provide a device to the candidate for the entire course namely Electronic Paper Device which is a Note 9.7 inch E reader with Note Writing. The EPD has the following features:*
> **Customized for every student whose name, enrollment number, subject, institution shall appear once he logs in.*
> **Syllabus of the enrolled subject can be downloaded from the course subject planner once the student logs into the APP.*
> **All the licensed copies of e-books for the subject can be downloaded from the course planner free of cost.*
> **EPD shows the statistic of all the study material made available to the student e.g.*
>
> *- Whether the student has gone through the assignment*
> *- How much time student has studied a particular subject/book*
> *- Weak topics of the students on basis of assessment*
>
> **Centralized uploading and online access ensures that you can learn whenever and wherever you want to.*
> **EPD is health friendly for continuous study patterns.*
> **E note facility for writing on device to make notes is provided.*
> **Assessment modules to help the Personalized Learning Gap of the students.*
> **Regular schedule can be checked using the device.*
> **Submission of case study can be done using the device.*
> **Can work as log book."*

95. The most highlighted aspect of the said report and which will reflect upon its flawed approach is its observation to the following effect:-

> *"6 As per the inputs/comments provided by the technical expert members, CPS representatives provided the final amended version of the MSRs (placed in file CPS. However, CPS President informed the CPS Committee that suggested comments were incorporated in the syllabus/MSRs, but as far as requirement of faculty is concerned, it would not be possible for CPS to follow the MCI norm as main objective of the recommendation and recognition of courses is to fill the gap of basis/required specialist at PHC/CHC level. Furthermore, diploma awarded by CPS, Mumbai doesn't eligible the aspirant/candidate for the purpose of medical teaching faculty. Hence, it was not feasible from CPS side to incorporate the faculty norms suggested by the technical members and same was agreed upon by the constituted committee members."*

96. The Athani Committee therefore, recommended 14 diploma courses of CPS and its significant recommendation was inclusion of a Member from Government in its governing body. Another interesting suggestion offered is the nomenclature of the diploma courses offered by CPS should be distinct from the courses offered by National Board of Examination (NBE). It is suggested that in order to avoid conflict in diploma awarded by MCI, NBE and CPS there may be notation of CPS as suffix and pass out candidates shall strictly adhere to the use of the same at the time when they describe their qualification. It was also suggested that the Ministry may constitute a Standing Committee for monitoring the overall functioning of the CPS.

97. The reports of the two Committee, according to us, are completely flawed as they fail to consider that MCI as a regulatory body, already was in charge of medical education, a professional course which necessarily required professional

approach and it was constituted as a statutory body, to discharge such powers and functions contemplated under the statute, which included prescription of standards of professional conduct as well as prescribing the minimum standards of medical education required for granting recognised medical qualifications by Universities or Medical Institutions of India as well as maintenance of a register of medical practitioner, with recognized medical qualification, we wonder as to how could have the Committees in utter ignorance of the existence of the Indian Medical Council Act, 1956, an enactment for constitution of the Apex body could have come to a conclusion that the courses offered by CPS conformed to the standards prescribed by it, as CPS was only recognised as an Examining body.

98. The MSR of CPS which were placed before the Committee are also perused by us and a few of them including the faculty eligibility criteria, according to us, in no way, make the institution offering the course compliant with the MCI Regulations, which have a binding force. When Doctors acquire their qualification and in this case, the Doctors with specialization, we expect the 'standards' to meet a threshold and who shall determine these standards, the answer is obvious. By virtue of Entry 66 of list 1 of the Seventh Schedule of the Constitution, it is only the Medical Council of India, which is competent to govern, establish function, including maintenance of standards of education and with the law pronounced on the subject, the power can be exercised only by an authority constituted under the statute enacted by

the Parliament and not even an authority constituted under the State legislation.

Even if the State had to enact a legislation by invoking Entry 25 of List III, it had to restrict its competence, subject to entry 63, 64, 65 and 66 of the Union list, since this power could have been exercised only by the Parliament and when Parliament has made any law which is outside the scope of these entries, but within the scope of Entry 25 of list III, even in such a case, the principle of repugnancy would apply if a State law is in conflict with such Parliamentary law.

99. After coming into force of the NMC Act, 2019, MSMER 2023 were formulated which has come into force w.e.f. 19/09/2023 which also contain provision for submission of Annual Disclosure Report, making it mandatory for every College/Institution to satisfy the Maintenance of Standard Regulations (MSR) and it is the duty of the college to maintain the standards and not the other way round, that the Council will call for such compliances. Rule 5 thereof prescribes for evaluation of the report submitted by the college through the Board and this would include verification of the infrastructure, faculty, teaching method, review of feed back and also contemplate clarification to be cited, if any non-compliance is noted. Rule 6 of the Regulation is in form of an independent evaluation and Rule 7 provides for renewal certificate, whereas Rule 8 is the clause for penalties, and according to the said Regulation, if there are curable deficiencies, it is open for the college to apply to cure the same.

100. The Hon'ble Supreme Court in the case of **MCI V/s State of Karnataka** (supra) has been pleased to recognize and enforce the following crucial and significant aspects of medical education by observing as under:

> "....A medical student requires grueling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study....."

Since we have already referred to the requirements prescribed in the Postgraduate Medical Education Regulations 2000, which are framed with the avowed objective of recognising the health needs of the community and carrying out professional obligations ethically and keeping with the objectives of the national health policy with the participation of those who have mastered the competencies, pertaining to the speciality that are required to be practiced at the secondary and tertiary levels of healthcare delivery system. Merely because there is need of more doctors, is no justification to provide professionals of inferior quality, who lack the necessary competency, as they have not acquired the qualifications or the proficiency because of lack of infrastructure, a properly chartered curriculum, focus upon theory and practice, both. For their qualifications to be an accepted qualification, it is also necessary that the education is imparted to them by persons with proficiency and in absence of maintaining the teacher student ratio, the qualification acquired may not achieve the desired result.

101. In any case, the recommendations of the aforesaid two Committees prompted the Ministry of Health and Family Welfare to issue a notification on 17/10/2017 by exercising the power conferred by sub-section (2) of Section 11 of the Indian Medical Council Act, 1956, after consultation with the Medical Council of India, thereby inserting 39 diplomas in Schedule-I of the IMC Act and it recognised medical qualifications granted by CPS after the cut-off date.

A note at the end of the notification, however, imposed a restriction by stating that the CPS qualification shall not be treated as 'recognised medical qualification' for the purpose of teaching and also, that any Post Graduate degree course to be run by CPS shall be with the prior approval of this Ministry subject to fulfillment of stipulations prescribed on the lines of minimum standard requirement regulations of MCI.

102. The Medical Council of India through Mr.Gole has strongly objected to the indication of its approval in the said notification when it is recorded, "the Central Government after consulting the Medical Council of India, hereby makes the following amendments in the First Schedule of the Act."

103. Once again, on 22/1/2018, Health and Family Welfare Department took a 'U' turn and deleted 36 diploma courses, but inserted 10 courses in form of Membership of College of Physicians and Surgeons, Mumbai (MCPS) and the fellowship courses, which are described by Mr.Dada as the original 10 courses, with the result that the 10 qualifications received recognition under the IMC Act, 1956.

The Central Government, while reintroducing the 10 courses in the Schedule to the IMC Act, 1956, adopted the route of sub-section (2) of Section 11, but exercise of this power was available only when the University or medical institution apply to the Central Government to have such qualification recognised and upon consulting the Council, such qualifications may be included in the Schedule to be a recognised medical qualification only granted after specified date. Neither of the stipulations contemplated in the Section were satisfied and not only that, the courses which were recognised and removed from the Schedule were introduced in the Schedule with retrospective effect. Moreover, the Central Government never enquired about how many colleges affiliated to CPS would be running these courses and if they are to be imparted through the Colleges of Medicine, whether they were established in accordance with the statutory provision in form of Section 10A of the Act of 1956.

We will be dealing with the serious objection of the MCI to inclusion of these courses a little later in our judgment.

104. At this stage, the parallel happenings of the events in the State of Maharashtra, is upon the enactment of Maharashtra Medical Council Act, 1965.

The Act of 1965 for making better provision in the law regulating registration of persons practising modern scientific medicine in the State, is also to be take note of.

A medical practitioner, according to the Act of 1965, was a person engaged in the practice of modern scientific medicine in any of its branches including surgery and obstetrics. The registered medical practitioner was defined u/s.2(1) to mean a

medical practitioner whose name for the time being entered in the register to be prepared or deemed to be prepared and maintained under the Act and included a separate register maintained by the Maharashtra Medical Council, constituted under the Act for those covered by Entry 28 of the Schedule.

The Act of 1965 constituted the State Medical Medical Council, with the Director of Medical Health Services as well as the Director of medical Education and Research as its ex-officio members along with certain other members to be nominated by the State Government and it also included one Member to be elected by the governing body of CPS and 9 members to be elected by registered practitioners.

The MMC constituted under section 3 of the Act, was entrusted with the powers, duties and functions set out in Section 10, the prominent one being to maintain the register and to provide registration of medical practitioners. In addition, it is also empowered to prescribe a Code of Ethics for regulating the professional conduct of the practitioners and also to reprimand or to suspend or remove a practitioner from the register or to take such other disciplinary action which it deems necessary or expedient.

The preparation and the maintenance of register is what is provided in Chapter III and sub-section (3) of section 16 prescribe that any person who possessed any of the qualifications specified in the Schedule to the Maharashtra Medical Council Act or in the first, second or third Schedule to the Act of 1956, shall subject to any conditions laid down, on an application being made to the Registrar and on presentation of his degree/diploma, licence or certificate, be

entitled to have his name entered in the register maintained under the Act of 1965.

105. Section 28 is a provision for Amendment of the Schedule, which is a power available to the State Government to be exercised on the report of the Council, or otherwise, as regards inclusion or deletion from the Schedule appended to the Act. However, at this stage, it is suffice to note that the Schedule appended to the Act set out the qualifications in addition to those specified in the Schedule to the Indian Medical Council Act, 1956, the possession of which entitled a person for registration under the Act of 1965. This Schedule included the three entries :-

> "(1) Fellowship fo the College of Physicians and Surgeons, Bombay in Medicine, Pathology, Surgery or Dermatology granted before 1st April 1954.
> (2) Fellowship of the College of Physicians and Surgeons, Bombay, in any subject other than Medicine, Pathology, Surgery or Dermatology.
> (3) Member of the College of Physicians and Surgeons, Bombay (admitted before the 30th April 1944)"

In addition, Entry no.28 included three Fellowship and eight diploma courses prescribed by College of Physicians and Surgeons of Bombay with a note below:-

> "The Government of Maharashtra further directs that the above qualification should not be treated as conferring recognised medical qualifications under the Indian Medical Council Act, 1956".

106. After the Central Government by its notification dated 22/1/2018, deleted 36 diplomas out of 39, and added 6 fellowship courses offered by CPS in the Schedule to the Indian Medical Council Act, the National Medical Commission Act, 2019 came into force with effect from 8/8/2019.

107. Now turning our attention to fate of CPS in Maharashtra, it is to note that, on 14/3/2023, MMC probably for the first time took cognizance of the courses being run by the CPS in a flawed manner, as it noted that these courses are run through various government and private hospitals and in January 2023, the inspecting team of the MMC visited 120 institutions/hospitals to find that two of them were shut and 73 refused to offer themselves for inspection. The 45 institutions which were inspected were found deficit in teaching staff and beds and thereafter, a report was forwarded by MMC to the State Government.

108. Taking note of the gravity of situation and realising that if such deficit courses are being permitted to run, it will have adverse impact on the medical education and ultimately, on public health, by invoking the power under sub-section (2) of Section 28 of the Act of 1965, show cause notice was issued to CPS as to why the courses shall not be deleted from the schedule appended to the Act.

CPS responded to the show cause notice and requested for furnishing the inspection report, but when it was not received, a Writ Petition came to be filed raising a challenge to the show cause notice. Writ Petition No. 1214/2024 filed by CPS was dismissed vide judgment dated 25/4/2023, by the Division Bench, by observing that it was only a matter of show cause and the pertinent observations in the said order record thus:-

> *"20. This is exactly the purport of Section 28(2), set out above. If the course of study or the examinations for any diploma etc*

included in the Schedule are insufficient to properly qualify students for a medical practice, to impart to them the necessary standards of competence and proficiency, then, subject to the two provisos, the State Government has the power to remove the courses from the Schedule. What CPS suggests is that these standards of medical education are not its concern. It does not matter whether a non-teaching hospital does or does not have staff, faculty, facilities, or even if it is running : the course cannot be removed. It is somehow immutable and written in stone. That argument is only to be stated to be rejected. We are not prepared to endorse a descent into greater mediocrity and incompetence."

109. Subsequent to the dismissal of the Petition, CPS responded to the show cause notice and while it did so, it queried with the MMC as to what are the norms framed by it which are alleged to have not been followed.

On one more occasion, MMC inspected 38 institutes which offered the course and it is the claim of the CPS that the said recommendations were not communicated, but straightway an order was passed on 13/7/2023 by the State Government through Medical Education Department, removing the courses from the Schedule appended to MMC Act, 1965, by invoking Section 28(2) of the State Act.

110. Perusal of this order would disclose that the decision was taken in the wake of the inspection of the 120 private institutions/hospitals in which the CPS courses were being run and the deficiencies were clearly highlighted by pointing out that as per the norms of NMC, New Delhi, before starting a Post Graduate course, there must be a college imparting education in MBBS. However, the colleges alleged to be affiliated to CPS, did not comply with the said requirement. Moresoever, as per the MCI Act of 1956, no college/hospital imparting medical education can be started without

permission of the Central Government and therefore, all the private hospitals where the courses are imparted, are not established in accordance with Section 10A of the IMC Act, 1956. Further, the necessary bed strength as prescribed by the National Medical Commission as well as other parameters are also not satisfied.

Pointing out the deficiencies in the manner in which the Colleges which offer CPS course on the pretext that they are affiliated to it, it was noted that though opportunity was given to CPS to deal with the same, no satisfactory explanation is received and in any case, since the deficiencies went to the root of the matter, so as to recognise the qualification awarded by it, as the requisite medical qualification for the doctors to be registered as medical practitioners, the courses run by CPS were deleted from the schedule. Very categorically reference was made to the deficiencies in infrastructure and faculty, thereby violating National Medical Commission, Minimum standard requirements and CPS continued with its rhetoric that its courses are already recognised under the 1956 Act and they are not required to comply with any Regulations either prescribed by MCI or even the NMC, the body which substituted it.

The Division Bench speaking through Justice Gautam S. Patel (As His Lordship then was), while dismissing the petition filed by College of Physicians and Surgeons, testing the nub of the issue, zeroed down the purpose of show cause in the following words:-

> *"14. What is really being asked for is something that is manifestly in the interest of post-graduate students of medicine, whether studying diploma courses or otherwise. What the government wants to*

know is, for every CPS diploma course in the Schedule, the name of the private institution that is offering the diploma, who is going to conduct the teaching, the qualifications of such a person and the facilities in that institution to impart education and training including practical training and experience. Obviously, the endeavour is to see that it is not some hole in the wall self-proclaimed 'institute' that claims to offer a 'CPS course' without actually doing anything in the direction of education, and merely hands out diploma with no education behind them.

15. Mr. Kadam says there is no question of de-recognising the course and that recognising or de-recognising an institution is not CPS' concern. We disagree. We do not see how CPS can then have a cause of action in the Writ Petition at all, because if it is not concerned with the institutions then it merely had to say so and it would not be concerned with the show cause notice either. If its intention is that CPS diploma courses must be allowed to run, then they have to be run in a manner that is both meaningful and does not do violence to the statutory intent. Those courses are post graduate diplomas available where attempts at regular post graduate admissions have failed. Hence there is a separate round of counselling for the CPS diploma courses. It can hardly be suggested that CPS, which designs and programs the courses, has no concern with where they are being taught, or how they are being taught, or even if they are being taught at all, or that these are matters of complete irrelevance or indifference to CPS. Surely if it si a CPS course and recognised as such, then CPS must know- and must demand to know and have a record- of who is running that course that bears the CPS name, where that course is being offered, and with what capability. That is surely not too much to ask."

111. As far as the State front is concerned on 14/3/2024, the State Government restored 10 courses and in the additional affidavit filed on 10/3/2024, a specific statement was made on behalf of CPS that a hearing was fixed by MMC when the representatives of CPS requested to provide hearing for restoration of all 26 CPS courses which were part of schedule to MMC Act. However, the hearing was conducted only as

regards 10 CPS courses recognised by Ministry of Health and Family Welfare, Government of India and these 10 courses were restored by order dated 15/3/2024, leaving 16 courses out of the schedule of MMC Act.

112. In the wake of the aforesaid, situation prevailing in 2023 was that 10 PG medical qualifications were continued in the first schedule of the IMC Act and pursuant to the notification issued by the State Government two fellowship and 8 diploma courses were included in the schedule appended to the State Act.

113. During the hearing of the Public Interest Litigation along with WP 2703/2024, a communication dated 19/07/2024, addressed by Ministry of Health and Family Welfare (MOHFW) to the Medical Education and Drugs Department, the view of the Ministry found its way as below :-

> *"3.1 The power to give license to institute/hospitals other than those listed in schedule of NMC Act, 2019 to start a course or recognised qualification rests with NMC. Accordingly, there cannot be any exemption for CPS from the statutory provisions of NMC Act, 2019 enacted by the Parliament.*
>
> *3.2 As per Section 10A of erstwhile IMC Act, 1956 and Section 28 of NMC Act, 2019, no person shall establish a new medical college or start any PG course without previous permission of Central Government and EMRB of NMC respectively. As informed by erstwhile MCI vide letter dated 02.11.2017, no such permission was given to CPS.*
>
> *3.3 Indian Medical Degrees Act, 1916, which empowers CPS to grant degrees, has been repealed by Repealing and Amending Act, 2016 (23 of 2016)*
>
> *3.4 Upon repealing of Indian Medical Degree Act, 1956, CPS has lost its validity to confer the degree. Therefore, as on date, no course run by CPS, Mumbai should be recognized for the purpose of NMC Act, 2019 w.e.f. 05.05.2016.*

> *4. Further, it has been observed in the submission of the NMC that the counselling for the admission for the Academic Year in the hospitals/institutions running courses under the umbrella of CPS, Mumbai would be started from 09.07.2024. This would be a violation of the Hon'ble Supreme Court order in the WP No. 76/2015 in the case of Ashish Ranjan Vs. UOI and ors, which stipulate that there can be no admission after the last date of joining. The last date of joining for the Academic Year 2023 was 30th November, 2023."*

Since it was made clear that the counseling for the admission of the year 2023 do not deserve any consideration, leaving the fate of the students for the academic session 2023 as it is, we deemed it appropriate to take up the issue of admissions to the academic year 2024-2025.

114. In Writ Petition (L) No. 24270 of 2024, which involved the decision of PGMEB, taken on 16/07/2024 to discontinue all courses running under the umbrella of CPS with immediate effect, was taken with a view to safeguard the career of the students and also the health system in general and a direction was issued to CPS to suspend its examination activity with a recommendation to the NMC in terms of Regulation 16 of the Recognition of Medical Qualification Regulations, 2023 to derecognize all qualifications listed in 1st schedule of erstwhile IMC Act, 1956.

115. We were rather amazed, on exhaustively hearing Mr. Thorat the PIL petitioner, who has also intervened in the two petitions filed by CPS, raising a challenge to the reintroduction of the 10 membership and fellowship courses granted by CPS, by retention of three courses, which were inserted by notification dated 17/10/2017 and insertion of six more

courses, in exercise of power conferred by sub-section (2) of Section 11 of the IMC Act, 1956 as well as inclusion of 10 courses in the schedule of Maharashtra Medical Council Act dated 15/03/2024.

The challenge to the continuation of the 10 courses by CPS, which are run through several Government and Private Colleges in the State, basically is that they are being run in violation of Section 10A and after introduction of this provision in the IMC Act of 1956, when the courses were once removed from the schedule in the year 2009, and when they are again introduced in the year 2017, it could not have been done except following the scheme contemplated under Section 10A.

There is no dispute that no application was made by any college in which CPS courses are being offered for receiving recognition under the IMC Act as in view of Section 10A, recognition can only be granted to those courses, which are run by the colleges, which are opened or started after obtaining the permission of the Central Government, upon submission of the scheme as contemplated. If the courses are offered by the colleges, which are not opened in accordance with Section 10A, then such courses deserve no recognition under Section 10B and therefore, the emphasis of the PIL petition is upon the non-recognition of the courses run by CPS.

What is most relevant to note is, in order to have proper medical education imparted, it is necessary to fix the sanctioned strength in a particular college imparting medical education as it would necessarily be in proportion to the teacher-bed strength available along with other infrastructure.

Every permission granted to open a medical college under Section 10A of the IMC Act, 1956 is dependent on the availability of the infrastructure, so that as it has a direct impact upon the quality of the education to be imparted and the intake is necessarily proportional to the infrastructure.

When the Devi Shetty Committee as well as Athani Committee, submitted its report which resulted into a decision by the respondent no.1 Ministry of MOHFW to restore the CPS courses in schedule I of IMC Act, 1956, with retrospective effect, what is strange is from the year 2009 till 2017, CPS courses were not being run. Admittedly, there was no infrastructure available and therefore, when the courses are restored, without being cognizant of whether the necessary infrastructure is available with the colleges, which are going to impart the curriculum for awarding of a diploma/fellowship, even the MOHFW did not bother to check the availability of infrastructure, but in a mechanical manner it restored the courses, that to with retrospective effect from the date of its removal.

We wonder as to how a responsible body like Union of India, Ministry of Health and Family Welfare, which is expected to cater to the medical health of the country and exercise vigilance over medical education through the Medical Council of India, an expert body authorised to prescribe minimum standards of medical education and regulate its observance, was persuaded to restore the said courses.

116. MCI by relying upon the affidavit filed by Shri Ashok K.R. Harit, the Deputy Secretary, has asserted the importance of MCI under the Act of 1956 and also the Regulations of 2000

prescribing the minimum requirement for conferring PG qualification.

Mr.Gole has taken us through the communications exchanged between the MCI and Government of India, in order to impress upon us, that the MCI was always insistent on compliance with the PG Regulations and on noting that CPS do not conform to it, it had recommended to the Central Government for its de-recognition. In the wake of Section 10A being introduced in the IMC Act with effect from 27/8/1992, the visitors Committee of the MCI visited the CPS and submitted its report to the Council. On 23/10/1997, the General Body of MCI approved the decision of the PG Committee to recommend withdrawal of recognition to the various Post Graduate qualifications included in the first Schedule of IMC Act, awarded by CPS. On 16/1/1998, the decision was communicated to the Government of India, Ministry of Health and Family Welfare regarding withdrawal of recognition of the PG qualifications granted by CPS with immediate effect. Thereafter, another communication to the same effect was addressed on 23/9/1999 and on 29/2/2000 and 10/8/2000 in which the Medical Council of India made it clear to the Central Government, that the PG Medical qualifications conferred by CPS should be forthwith discontinued and it expected an immediate decision on part of the Government of India.

All the while, MCI relied upon the PGMER 2000 and specifically asserted that once the Regulation had come into force, it was mandatory for CPS to follow the Regulations and at the most, the existing system which was adopted by it could

have continued till the last student admitted by it, passed out but not thereafter.

We find that MCI has remained consistent in its stand right from the year 2009 when the first PIL was filed and its efforts resulted in issuance of notification by the Union of India on 2/12/2009 amending Schedule I of the IMC Act, thereby deleting qualifications of CPS. However, thereafter, on 5/8/2010, the Union of India constituted Devi Shetty Committee which submitted its report recommending inclusion of CPS courses in the wake of its necessity.

117. The National Medical Commission has also filed an affidavit through its Under-Secretary and along with the affidavit, some relevant documents are placed before us.

We must note that the National Medical Commission has stepped into the shoes of MCI and has continued with the stand adopted by MCI. The affidavit is accompanied with the record of discussion of the meeting held on 12/4/2017 under the Chairmanship of Secretary (HSW) to discuss matters related to recognition of fellowship and diploma courses of CPS, Mumbai, in the wake of the report of the Committee of Dr. Devi Shetty.

The Minutes record that it was decided that diploma courses run by CPS, Mumbai may be allowed to be included in Schedule I of the IMC Act with the following conditions.

> *(i) All the admissions should be through NEET PG and centralized counseling and as per Government policy from time to time.*
> *(ii) The CPS qualifications shall not be treated as a recognized medical qualification for the purpose of teaching.*
> *(iii) The courses run by CPS will be reviewed every three years for their continuance initially for a period of ten years, which could be then reviewed from time to time,*
> *(iv) Further any postgraduate course to be run by the CPS*

shall be with the prior approval of this Ministry subject to fulfillment of stipulations prescribed on the lines of Minimum Standard Requirement Regulations of MCI."

The Minutes also record that as diploma courses run by CPS are proposed to be included in Schedule-I, CPS may withdraw the Writ Petition filed before the Bombay High Court since it will be rendered infructuous.

This resulted in issuance of notification by the Union of India on 17/10/2017 now including 39 courses of the CPS in Schedule I, without any basis as the courses which were deleted in 2009, were only 10 in number.

118. This prompted the MCI to address a communication to the Government of India on 2/11/2017 where it expressed its concern over the manner in which the courses run by CPS, a Society, which did not had a full time teaching faculty or proper building, hospital and other infrastructure facilities for imparting teaching and training to students etc, which is a sine qua non for every institution imparting medical education. Specifically stating that CPS is a Society lacking any infrastructure teaching faculty, hospital etc, is not legally entitled to conduct any medical course as well to confer any degrees, it was asserted that qualifications conferred by CPS cannot be treated as recognised medical qualification. A specific concern was expressed by stating that the first schedule to IMC Act included courses only in respect of which the degree, is granted by University or medical institutions affiliated to the University have been recognised by the Central Government. In the background, that the qualifications deleted from Schedule-I were reintroduced, the MCI noted thus:-

"5. In other words, the Ministry while issuing notification dated 23.10.2017 lost sight of the fact that the said notification would result in completely bypassing the statutory scheme incorporated under the Act and the Regulations framed thereunder since the degrees awarded by CPS has been recognised by the Ministry without there being any formal application, scrutinizing and processing of application, verification of availability of Minimum Standard Requirements etc. . There was neither any consultation nor any consideration with the MCI with respect to the above-mentioned courses and the same will be contrary to scheme of IMC Act, 1956 and the Regulations framed thereunder. The notification dated 23.10.2017 sets a very dangerous precedent as other colleges will come forward citing the said notification and claim that the degrees awarded by the University or affiliating University should be recognized in the same manner as is done in the case of CPS.

6. In so far as CPS is concerned it has not been granted permission under Section 10A of the IMC Act, 1956 by the Central Government for conducting post graduate and super specialty diploma courses. Thus, the degree granted by CPS for the various courses conducted by them cannot be recognised, in view of Section 10B of Act As stated above, CPS is not an University of College affiliated to any University and, therefore, any degree granted by it in respect of any course cannot be included in the First Schedule. This is for the reason that CPS is merely an organization in the nature of a registered Society and not legally entitled to award degree in respect of medicine courses. Hence, the same cannot be included in the Schedule.

14. However, it is quite apparent that most of the 36 new Diploma courses which have been included in the First Schedule by the Central Government vide notification dated 23/10/2017 are either not included in the above-mentioned list of diploma courses provided in the schedule to the Regulation or the terminology/nomenclature given to the diploma course is different from what is prescribed under the Regulations. As per Regulation 7, it is imperative that the diploma course fulfils both the criteria viz. Diploma course to be included in the list provided in the Schedule to the Regulation and the terminology/nomenclature of the diploma course to be in accordance with the said Schedule. In view thereof, the notification dated 23.10/2017 issued by the Ministry results in an anomalous situation. Whereby, the courses which are not included in First Schedule to the Act and are being

> *treated as recognised medical qualification. Further, it is relevant to state that under the Postgraduate Medical Education Regulations, 2000 there are no diploma courses provided for medicine super-specialties under any nomenclature whatsoever."*

In the wake of the above observation, the Ministry was requested to re-examine the notification issued by it and take corrective steps.

119. Despite the aforesaid, the MOHFW on 3/11/2017 addressed a communication to the Health/Medical Education Department of all States/Union Territories, informing that the diploma courses run by CPS have been recognised and included in the First Schedule of IMC Act with the condition that all admissions should have been done through NEET PG and common counselling and the CPS qualifications shall not be treated as medical qualifications for the purpose of teaching.

On 3/11/2017, the Government of India once again addressed to all States/Union Territories and with regard to the recognition granted to the diploma courses run by CPS by its notification dated 17/10/2017, it reiterated thus :-

> *"2. The CPS courses provide low cost PG medical education with no economic burden on the Government and also provide opportunities to MBBS doctors to acquire intermediate specialization.*
>
> *3. Therefore, the State/Union Territories may consider to run CPS courses in district hospital and for the purpose, a proposal may be sent to CPS, Mumbai at the earliest.*"

120. On 21/11/2017, once again the MCI wrote to the Government of India in continuation of its earlier letters with regard to the legal infirmities in the notification issued by it

recognising the qualifications awarded by CPS and upon being informed about the letter issued by Union of India, recognising the courses and calling upon the Government of State/Union Territory to "consider to run CPS courses in District hospitals" for the purpose and asking that proposal to be sent to CPS Mumbai at the earliest, once again it was informed that the communication by the Ministry is in contravention of Section 10A of the IMC Act, 1956.

Without mincing any words, the MCI specifically stated thus:

> *"Therefore, the Council is firmly of the view that notification regarding CPS published in the Official Gazette dated 23/10/2017 is void ab initio and is required to be recalled. Consequently, the letter dated 3/11/2017 emanating from such notification of the State/Union Territory is also required to be recalled.*
>
> *It is once again requested that your Ministry should for the sake of maintaining standards of medical education, take corrective measures regarding CPS notification."*

121. A detail letter from the Chairman/Academic Committee as well as the President of the MCI dated 27/11/2018 addressed to the Secretary, Government of India, expressed its anguish over turning a deaf ear to its request to de-recognise the courses run by CPS since it did not meet with the required standards prescribed by MCI Regulations and reference was also made to the Minutes of Meeting dated 12/4/2017 for the purpose of suggesting the road map for including of various post graduate qualifications which have been de-recognised by the Central Government.

With great despair, it was stated as under:-

> *"At the said meeting to our definite understanding the inclusion of the qualifications granted by CPS included in the first schedule appended to the IMC Act, 1956 was*

limited to those that were included in the Notification of withdrawal of recognition if 2009. Precisely for this reason there was no "Annexure" appended to the said minutes at the given point of time. It was a very specific understanding of ours that the inclusion in the first schedule pertained to only those qualifications conferred by CPS which came to be derecognized and therefore would be restored for their inclusion upon withdrawal of the de-recognition Notification. Further the modality of inclusion of the qualifications conferred by the CPS (derecognized by the Government of India, by the Notification dated 2009) would not be in terms of section 11 (2) of the Act, but would be in the similar modality as is applicable to the inclusion of qualification conferred by National Board of Examination in Schedule-1 his has been explicitly and loudly brought out in Para 2 of the Minutes of the said meeting as a matter of record.

It was on this specific understanding that we affixed our signature on the minutes of the meeting dated 12.04.2017. However it is seen that the scope of operation arising out of the said minutes has been unilaterally broadened to included qualification which were never the part of the discussion and were never under qualification for their inclusion. As a matter of fact the 'annexure' that is appended to the minutes does not bear any signature including the signature of the President. Medical Council of India and Chairman Academic Committee of Medical Council of India.
We are of the considered opinion that the said broadening which as been availed is inconsistent with the discussion and decision taken in the meeting dated have been brought out herein above."

The attention of the Ministry was also invited to the observations of the Apex Court in Writ Petition No. 502/2017 – IQ City Foundation and Anr Vs. Union of India and ors, to the effect that it is essential to have institutions which are worthy to impart medical education, so that the Society has not only qualified doctors but doctors with impeccable and sensitive qualities, with the emphasis on the compliant institutions that can really educate Doctors by imparting quality education so that they will have inherent as well as cultivated attributes of excellence.

122. Even thereafter, MCI repeatedly communicated its stand to the Government vide its communication dated 19/12/2017, requesting it to recall the notification dated 23/10/2017, by specifically stating that the notification issued by the Ministry vis-a-vis CPS contained several diplomas in super-specialty discipline which is not permissible as per the extant regulations. It also suggested as below:-

> *"In light of the above, it is most humbly requested that the Ministry may recall the notification dated 23/10/2017 issued by the Ministry. The Ministry may consider directing CPS to submit the application/scheme for grant of permission which shall be processed in accordance with the provisions of IMC Act, 1956 and regulations framed thereunder."*

123. Instead of taking any steps, on the concern expressed by MCI, the Union of India chose to constitute a Committee under the Chairmanship of Dr. B.D. Athani, which was nothing but an attempt to whitewash the letters from MCI. The Committee was directed to examine the Minimum Standards Requirements (MSRs) fixed by CPS for accreditation of participating institutions and to study the mechanism adopted by CPS, Mumbai for inspection/certification of the institute. The whole intention was to somehow to confer status on the courses run by CPS since the MCI was all the while opposing running of the courses on the ground that they are not compliant with PG Regulations framed by it. One of the term of the reference of the Committee included the study of the possibilities of the expanding of CPS courses over the years.

The whole object behind this exercise, therefore, appear to us is to somehow render helping hand to CPS by recognising its qualifications.

124. The Central Government succeeded in its endeavour, when on 22/1/2018, in exercise of powers conferred under sub-section (1) of Section 11 of the IMC Act, 1956, it issued a notification thereby deleting 36 courses of CPS and adding 7 fresh courses in form of membership and fellowship.

Once again, MCI sprung into action and expressed its displeasure, by refusing that that it would not nominate any representative to the Hand holding Committee.

125. In Writ Petition No.6751/2018, the Division Bench of this Court on 13/7/2018, taking cognizance of the stand adopted by the Government of India as it posed a question that how can the Government of India continuously ignore the opinion of the MCI, when MCI has clearly indicated that CPS is nothing but a Society, and it is not a recognised University or deemed University and therefore, not covered by UGC Act of 1956 and the Court expressed its displeasure as under :-

> *"4. This is not Kindergarten or primary education. This is Medicinal and Professional degree. It is professional course where a person is trained to be not only just a graduate in the field of study, but enables him to obtain higher and better qualifications. This two years diploma course being conducted by an institute of the above repute really brings throws entire medical education in total disarray. The history of medical education in India reveals that the Union of India hardly cares for the opinion of the expert body and rather brushes it aside conveniently so as to accommodate some courses / some institutions/ some colleges. If we go on permitting this, a day will come when a course of this nature and type will be conducted on a road side or on the pavement without any infrastructure. We do not want any MBBS doctor with such qualifications attached to his name viz. DCH (CPS), etc. It is ultimately a patient who will be misled and he would consider such doctors to be experts."*

126. When MCI stood dissolved on 25/9/2020, when Section 60 of the National Medical Commission Act, 2019 was notified

and at the first opportunity, it addressed a communication to the Executive Director of the National Board of Examinations, a competent body under the NMC Act that FCPS (midwifery and Gynecology) qualification awarded by College of Physicians and Surgeons, Mumbai, are registrable for practice, but there is no notification with respect to their equivalence to M.D/M.S.

In this regard, the NMC, Post Graduate Medical Education Board (PGMEB) wrote a letter to the Joint Secretary, Medical Education Policy, Government of India, regarding representation from President of College of Physicians and Surgeons, Mumbai, with regard to the recognition of courses offered by it. The report of the Committee to provide Hand holding Support to CPS was examined and though the Committee had recommended that the recognition and expansion of CPS courses would benefit the country, by providing trained specialised doctors in rural and peripharal areas, it expressed its opinion as below:-

> *"The Commission however, is not in agreement with the observation of the need for equal PG seats as UG seats, as the health care structure in the country differs from that in the countries alluded to. The Commission also feels that the country needs more general physicians and/or Family physicians than specialists to cater to the needs of our population. The argument that those with qualifications conferred by CPS would be available to under-served and rural areas cannot be justified if such under trained physicians/specialists were to serve the most needy in the country. Further, the available documents do not support that those with CPS qualifications have predominantly served in rural/peripharal areas nor that they have contributed in substantial measure to the improvement of health care indicators in the regions where they are working/have worked. The Commission was also concerned with the quality of training, as CPS did not have the rigour of monitoring and supervision of the National Medical Commission in the institutions approved/ recognised by it. Further, the risk of being accused of promoting sub-standard training and specialists.*

The Commission in its considered opinion did not find any merit in the request for grant of recognition to the proposed 14 courses as suggested by the Hand Holding Committee. Further, it also strongly recommends that the qualifications of the College of Physicians and Surgeons of Mumbai currently included in the Schedules of IMC Act, 1956 (now the NMC Act, 2019) should also be demolished."

127. The Government of India continued with its stand and on 30/4/2021, communicated to the Ex-Director of NBE to the following :-

"Sir,

I am directed to refer to letters No. NBE/EDO/2020/429 dated 16.09.2020 and No. NBE/EDO/2021/2012 dated 06/04/2021 on the subject mentioned above and to say that the matter of equivalences of CPS qualifications to MD/MS/PG Diploma qualifications has been examined in the Ministry and the following is hereby conveyed:

(i) The DPB, DGO, DCH, MCPS, FCPS (Med.), FCPS (Path), FCPS (Surg), FCPS (Derm), FCPS (Mid.& Gyn) and FCPS (Opth) are the only recognised CPS courses at present.
(ii) The aforementioned FCPS qualifications awarded by the CPS, Mumbai are recognized medical qualifications for the purpose of erstwhile Indian Medical Council Act, 1956 and also for the purposes of the National Medical Commission Act, 2019. These qualifications are registrable qualification for practice, however, the same are not equivalent to either MD or MS courses.
(iii) The Diploma qualifications DPB, DGO and DCH – awarded by the CPS Mumbai are equivalent to their corresponding other recognised Diploma qualifications."

128. Even subsequent to the aforesaid, on 18/10/2022, the Government of India once again communicated with the NMC and in ignorance of the letters from MCI, and thereafter, NMC, on receipt of a representation from a student, who took admission in one of the 36 courses after issuance of Notification dated 17/10/2017, but faced problem in getting Post Graduate qualification registered, directed as under :-

> *"3 The matter has been examined in the Ministry and it has been found that there are total 466 students (List enclosed), who are facing problems in this issue. Therefore, keeping in minds the future of the students, it is decided and clarified that these qualifications stand recognised for those students who had taken admission between 17/10/2017 and 12.02.2018 (both date inclusive)*
> *4 You are, therefore, requested to give this a wide publicity so that the students concerned could get benefit of the decision of the Government of India."*

129. Despite the persistent stand adopted by the Central Government, the PGMEB continued its denial mode in its meeting held on 28/6/2022 at New Delhi and took a major policy decision as regards the courses offered by CPS and after due deliberation observed thus :-

> *(i) As per Section 25 of the NMC Act, the powers and functions of the PGMEB are to determine and develop and maintain best standards of medical education at the postgraduate level and super-specialty level by framing guidelines of requirements and standard for setting up medical institutions and medical colleges; and by developing competency based dynamic curriculum.*
> *(ii) Further, as per Section 35 of the NMC Act, 2019, the PGMEB has to recognise and renew the courses of qualifications."*

130. The NMC ultimately, in its meeting held on 12/4/2023, in reference to the letter received from the Vice President of the National Board of Examinations seeking clarification as to whether the diploma qualification awarded by CPS with reference to the students admitted to 36 courses during 17/10/2017 to 12/2/2018 can be considered equivalent to their corresponding recognised diploma qualifications, clarified as below:-

> *"In this regard, it informed that MoHFW vide letter dated 30.04.22021 clarified that DPB, DGO, OCH, MCPS, FCPS (Med), FCPS (Sugar), FCPS (Path), FCPS (Derm), FCPS (Mid & Gyn) and FCPS (Opth) are only recognized CPS courses at present and the Diploma qualifications DPB, DGO & DCH-*

awarded by the CPS are equivalent to their corresponding other recognized Diploma qualification."

131. The Board on due deliberation arrived at the following decision:-

Decision

"The Board deliberated the the issue of recognition and equivalence of diploma courses offered by CPS, Mumbai in detail. Since Schedule of the IMC Act, 1956. as per Section 10 and 25 of NMC Act, 2019, National Medical Commission and the PGMEB can oversee the quality and stranded of medical education in the medical colleges and institutions. Further, CPS does not follow the norms and regulations of the NMC/PGMEB. Moreover, CPS has refused to come under the supervisory or regulatory control of NMC/PGMEB. Hence, the Board decided to de-recognise these courses with prospective effect. Therefore, the question of equivalence of the diploma courses offered by CPS does not arise.

With regard to other diploma courses offered by CPS, the Board decided to not to recognise the remaining courses conducted by CPS."

132. The ultimate nail in the coffin was struck by NMC in its meeting of 14/6/2023, where the subject relating to residual courses of CPS was discussed, and despite the stand of Central Government that pre-diploma courses of CPS are recognised and have been given equivalence to the Diploma courses offered by the medical colleges by Ministry, but PGMEB did not agree to provide equivalence to these courses and recommended that equivalence given to three diploma courses should also be withdrawn from the next session as courses run by CPS do not come under monitoring control of NMC. What is pertinent to note in the Minutes is the following observation :-

"(b) President PGMEB informed the commission that earlier CPS has refused to come under the monitoring control of NMC when the issue of recognition of courses offered by CPS came up and

NMC asked CPS to pay the fee. CPS has replied that it is by nature similar to NBE in so far conducting of various medical courses and award of degrees is concerned, therefore, it cannot be considered as a medical college/institute. Ministry of Health have recognised the courses offered by CPS vide its letters dt. 30/4/2021 and 18/10/2022. NMC has the mandate to ensure quality of medical education in the country and CPS has to come under the supervisory/monitoring control of NMC for recognition of their courses and the Commission may deliberate on the matter and decide in this regard.

(c) NMC made detailed deliberations on the issue and has also taken into consideration that quality education is not being imparted by CPS to its students. Since CPS has refused to allow NMC's supervision/monitoring, the courses being offered by CPS may be derecognised and NMC to take up with Ministry of Health and Family Welfare for de-recognition of the courses offered by CPS."

133. On the level of the National Medical Commission, the PGMEB had conducted a meeting on 16/07/2024, where it pronounced upon the action on the reply to the notice given by CPS, Mumbai on 14/06/2024.

Referring to the existing regime, when the MCI was Regulatory Authority, it was noted that there was no compliance of Section 11 as well as the PGMER, which were intended to be followed mandatory as regards the norms for infrastructure, faculty, values, and ethics, and these regulations, contemplated recognition and renewal of courses of all the medical colleges/institutions and also for standalone institutions. It was noted that CPS never cared to renew the diploma and fellowship courses nor did it, upon constitution of NC approached it for their recognition and renewal of its courses or even for inspection/ assessment. The minutes of the meeting rightly noted that CPS considers itself to be an

examining body, with authority to give medical education, but this is a misguiding statement as under the NMC Act, the National Board of Examination is included in the Schedule, but CPS is not included and, therefore, it does not have any authority or permit or recognition for any course of qualification run by any hospital to conduct examination or award degree. With reference to Section 22 of the UGC Act, 1956, the right of conferring or granting degrees is only of the University established or incorporated by or under Central Act, a Provincial Act or a State Act or a Deemed University or an Institution, specially empowered by an act of Parliament to confer or degrees and, since, CPS do not fall within its ambit, it is wrongly assumed itself to be the examining body. The Board, therefore, decided to discontinue the courses of CPS and an examining body directed it to suspend its examination activity till it receive recognition/approval by NMC. It also recommended for derecognising the qualifications listed in the First Schedule of the IMC Act 1956, which included ten diplomas.

134. It is after the aforesaid development, a show cause notice was issued by PGMEB to CPS, with reference to the three PG Diploma Courses i.e. Diploma in Pathology and Bacteriology (DBP), diploma in Obstetrics and Gynecology (DOG) and diploma in Child Welfare Health (DCH) which received recognition to their corresponding recognised diploma qualifications, as per PGMER, 2000. However, since it was observed that CPS, Mumbai had never applied for renewal of recognition of the three courses and no details of the colleges which are running diploma courses were available, it

amounted to gross violation of PGMEB, 2000 and MSMER 2023 and compromised the standard of medical education, and therefore, an action was contemplated.

The show cause notice received response from the CPS but finding that it do not conform with the standards of medical education, on 16/7/2024, the CPS courses were derecognised.

135. It is evident that after the repeated harping and insistence of the MCI, the Government of India changed its perspective and realised that CPS courses which are totally unregulated is not a right sign in the medicine arena and therefore, it suggested that the courses shall be reviewed and shall be run by CPS only with the prior approval of the Ministry, making it imperative to comply the regulations of MCI/NMC.

136. It is worth to note that there is a body like National Board of Examinations, New Delhi, which has various courses affiliated to it and Schedule I of the IMC Act, has enlisted various diplomas which are the recognised diplomas and which have received recognition even in the NMC Act, 2019 by virtue of Section 37(1) which prescribe that the medical qualification granted by any statutory or other body in India which are covered by the categories listed in Schedule shall be recognised as medical qualifications for the purpose of the said Act.

137. At this stage, it is worth to reiterate reference to a communication dated 8/11/2017 addressed by the

Government of India to the MCI with reference to the CPS courses where it is clarified that medical institution as per IMC Act, 1956 is any institution which grant diploma or licences in medicine and that is how CPS comes under the ambit of Section 11(2). Drawing parlance with the National Board of Examination which is also a Society which confer degrees and which is included in Schedule 1, it is clarified that CPS is an examination body only and does not conduct courses itself. It accredits institutions, (Government and private hospitals) to run their approved courses on the lines of NBE. Clarifying that there are number of courses/ institutions which offer diploma/fellowship courses of NBE which are not covered under section 10A but recognised u/s.11(2) of the IMC Act, 1956, with reference to the withdrawal of the recognition granted to CPS courses in the year 2009, but which were recognised once again on 23/10/2017, on recommendation of the Committee set up by the Ministry to have a fresh look, the MCI was requested to concur with the recommendations, and therefore, it was suggested that the MCI may make a proposal to the Ministry for revising the nomenclature mentioned in the notification.

The Government of India ultimately resiled to the position when the members of the MCI protested that their stand has been misconstrued.

However, correspondence between MCI and Government of India has made it evidently clear to us that all the while was insistent upon running of the courses by coming under the aegis of the regulations of MCI but the Government of India remained firm on its stand. It was only when the NMC and the

PGMED adopted a stern stand, the impugned orders came to be passed. A feeble attempt was made before us in justifying the stand of Government of India being the CPS offered the low cost Post graduation in medicine and provide opportunity to the MBBS doctors to acquire intermediate qualification, but we really wonder whether this would be an appropriate stand for a body like the Union of India who is responsible for the help of its citizens and whether it can really afford to have half baked doctors, who received their diplomas in hospitals which lack in infrastructure including teachers, beds, etc. and if the stand of Mr.Dada is to be accepted that the CPS students focus upon practical aspect of medicine, as they get to treat patients, one wonder as to how this course can stand the test of a post graduate course, which necessarily is a combination of academic curriculum as well as the practical experience. Mere practice in medicine without adequate theoretical knowledge in the subject of specialization as these diplomas are offered as specialised courses definitely would not attain the purpose, which the Government of India once upon a time intended by claiming that the CPS courses provide low cost Post Graduate Medical Education with no economic burden on the Government. The stand of the Government of India that they intended to adopt a dynamic public centric approach, failed to impress us. In any case, now, it has acted firm. As a result, the CPS has lost its ground.

The above provision in the IMC Act 1956, with the Medical Council of India, as recommending opening of a new or higher course of study or training and increase of admission capacity in any course of study or training (including a

postgraduate course of study or training) Regulations 1999, contemplated the grant of permission initially for a period of one year, subject to renewal on yearly basis, subject to achievement of annual targets. Postgraduate Medical Education Regulations of 2000, which set out the norms to be followed by the Medical College or Institution made mandatory to ensure its compliance in respect of various factors to which we have already made reference in the paragraph above. The permission to open the Medical College is contemplated under section 10A and recognition followed. Once the newly established Medical College or institution, satisfactorily complete five years with the graduation of first batch of students admitted to the institution, the Regulation cast responsibility on the College to apply to MCI for renewal of permission, six months before its expiry and the process of renewal of permission will continue till all required formalities are completed and a formal recognition to the medical colleges granted. That detail mechanism set out in the Regulations framed by MCI ensured the overall vigilance by it to prevent substandard qualifications for medical courses. Compliance of these Regulations by the medical colleges imparting medical education, either graduate or postgraduate, is a mandate and as per the scheme of the Act of 1956, no option is left open than to follow the standards laid down by the Medical Council. The medical qualifications included in the first Schedule of the IMC Act is the recognised medical qualification and a student acquiring this qualification is entitled to be registered as a Medical Practitioner in the Medical Register maintained by IMC as well as the State Council. It is the right of the student

to be registered as a medical practitioner, once he acquire the degree as per sub-section (1) of Section 11 of the Act, which recognises the qualification mentioned in Schedule I. Qualification is thus referable to the courses run by the University of institution and upon acquiring the qualification which is recognised, it is the right of its acquireem for his name being included in the Medical Register. However, it is not the right of the college to find its way, for its qualification to be recognised under sub-section (2) of Section 11, as the College has to come by following the scheme under section 10 A, which necessarily would require compliance of Minimum Standards of medical education as prescribed by the MCI. The mode and manner in the institution will impart education, conduct examination, for the course of study to be undergo for the qualification is all regulated by the Council, which is empowered to carry inspection or examine the Institute or the College, where medical education is given and only on satisfaction that the course of study and examination to be undergone, has the proficiency required from the candidates at any examination held by any University or medical institution and only on being satisfied that it conform to the standards prescribed by the Council, it shall recommend to the Central Government to grant permission for running of the course and to have the qualification recognised. In ***Medical Council of India Vs. Rama Medical College Hospital & Research Centre, Kanpur*** (supra), the Apex Court observed thus :-

> *"51 It is amply clear from Section 10-A that what is contemplated thereunder is permission for establishing a new medical college, which is to be granted by the Central Government upon the recommendation of the Council. The use*

> *of the expression "recognition" in the Regulation does not affect or alter the intention of the legislature expressed in unambiguous terms in Section 10-A as well as in Sections 10-B and 11 of the 1956 Act. Both the 1956 Act and the Regulations framed by the Medical Council make it very clear that while the Central Government has the authority to recognize the degree awarded by a newly-established medical college/institution, it does so on the evaluation made by the Medical Council and its subsequent recommendation.*

138. With the enactment of the National Commission Act 2019, by constituting the National Medical Commission, any institute, other than the one included in the Schedule to the Act has to obtain its prior permission to start a course of recognised qualification, and it is to be renewed at regular intervals. On the PGMEB issuing notice to the CPS for not following the provisions under NMC Act, it adopted a stand that it is an examination body similar to NBE. Despite the fact that it do not find mention in the Schedule of the NMC Act, CPS remained insistent to continue to run its courses by throwing all the norms and regulations prescribed by the supervisory that is the IMC, and now the NMC in air, and all the while it is living under a mirage that it continue to enjoy its standing, merely because some of its courses being run in the medical colleges found an entry in Schedule I of the MCI Act of 1956, despite the fact that it never sought recognition for its courses run through numerous colleges/institutions, who failed to live as per IMC regime and now the NMC regime. There is no reason why CPS should be conferred with the special privilege of not abiding by the statutory mandates. it never wanted to fit into it. The Indian Medical Degrees Act 1916, which empowered CPS to confer degrees has now been repealed by the Repealing and Amending Act 2016, and, therefore, it has

now lost its validity to confer degrees/diploma. The saving clause to the said Act only save the degrees that are already conferred, but no longer save the power of CPS to confer degrees and, therefore. now it cannot even function as an examining body. As on date, CPI has lost its ground either to confer or to have its qualification recognised under the NMC Act 2019, and, therefore, we wonder as to on what basis, it clinch to its past in asserting that it enjoy the status of an examining body as well as an affiliating body, as it never followed the procedure for affiliation of the colleges. It is high time that CPS mend its ways and overhaul its activity by subjecting itself to the existing statutory regime, so that it can operate in a systematic manner by subjecting itself to the Regulations governing postgraduate medical education, instead of asserting that since it had continued to impart education through various diploma courses for considerable length of time, it must be allowed to do so. We do not want to show any indulgence in its favour and not at least today, when the Union of India, the State Government as well as the National Medical Commission are unanimous in telling us clearly that CPS cannot continue to operate in this fashion, but if it want to come through a route available to it in the NMC Act, 2019, it may choose to do so. We do not intend to put the career of thousands of students in peril, nor shall we permit the health of this country in hands of such doctors, who have attained specialisation only on paper and cannot be trusted for their competency and expertise.

139. The argument advanced by Dr. Tulzapurkar, in a petition filed on behalf of the colleges as regards the order passed by the State Government being arbitrary, since at the relevant time, MMC was under control of an Administrator, is also without any merit and substance.

Section 31 of the MMC Act, 1965, authorise the State Government to dissolve the Council and cause all or any of the powers, duties, and functions to be exercised, performed and discharged by such persons, and for such period, not exceeding two years as it may think fit. It is also permissible for the State Government to further extend the time but not beyond total period of five years in the aggregate.

The Administrator so appointed by order dated 10/10/2022 therefore was conferred with the powers of the Council, and in any case, the power under Section 28(1) and(2) is the power to be exercised by the State Government, on the report of the Council or otherwise, when it forms an opinion that the course of study or the examinations prescribed by any university, college, body, or institution, for any degree, diploma, license, certificate, or award, which is included in the Schedule to the MMC Act 1965 is not such as to secure the possession by persons obtaining such qualification of the requisite knowledge and skill for the efficient practice of their profession as medical practitioners, or to secure maintenance of an adequate standard proficiency of such practice, then the State Government shall sprung into action and remove such qualification.

Dr. Saraf has demonstrated before us that at its whims and fancies, CPS continue to affiliate colleges which were

completely lacking the infrastructure necessary for conferring a degree/diploma, which include theory and practical, and this was clearly reflected from the inspection reports of these colleges. There is no denial ever by the CPS or the colleges that they possess the necessary infrastructure as per the MCI Regulations, 2000 and thereafter the NMC Regulations, 2023. The Advocate General has made it clear, that when the 10 courses were brought back in the Schedule to MMC Act, it was only for the reason that these courses continued to be in schedule I of the IMC Act, 1956 and not because they were compliant with the Regulations governing conduct of the courses.

Factual aspect of inspections in the colleges alleged to be affiliated by CPS is not denied and when it is made aware of the lacunae in the colleges, we find the attempt on behalf of the CPS as well as the colleges to save the diplomas conferred by it to be a feeble one, and no amount of criticism of the inspection reports or the argument that all the reports were not made available to it, is unable to pursuade us that the courses run by CPS are in accordance with the prescribed Regulations.

140. The PGMEB also directed stoppage of admissions for the academic year in the wake of the failure of the examining body to follow any Regulation and CPS, acceding to it or allowing it to fall under any regime. Instead of having the uncontrolled network of its courses being run through number of colleges, if CPS is able to offer the diplomas as a systematic activity governed by the Regulations prescribed and governed by the postgraduate studies like the National Board of Examination,

we do not think that PGMEB or the NMC or even the State Government would be constrained to take such an action, which would be detrimental to its interest. The argument that show cause notice was issued only as regards three courses but discontinuation is of all courses, also fail to impress us as all the courses run by CPS, were identically placed.

Therefore, finding no merit in either of the arguments advanced by Mr. Dada or by Dr. Tulzapurkar, we are left with no alternative than to decline the reliefs in the petition. The students who can have no better right than CPS or the colleges through which the courses are conducted also has no ground for any relief to be granted in their petition, which also must meet with the same fate.

141. Upholding the order dated 13.07.2023 passed by the Secretary, Medical Education of State of Maharashtra by invoking power under section 28(2) of Maharashtra Medical Council Act, 1965, deleting the qualifications specified under Entry No. 1, 2, 3, 19 & 27 in the Schedule as well as the Notification dated 14th July, 2023, Writ Petition No. 2703 of 2023, is dismissed.

We also do not find any infirmity in the impugned Notification dated 10th October, 2022 appointing an Administrator in exercise of power under Section 31 of MMC Act, 1965, till new Council is duly constituted and, hence, the Writ Petition is dismissed on that count too.

142. Letters dated 5th July 2024 issued by National Medical Commission to the Ministry of Health and Family Welfare, and

to the State Government as well as the letter dated 19/7/2024 from the Union of India to the State of Maharashtra and its competent Authority, i.e. Respondent No. 3, not to conduct counselling for ten(10) CPS courses under MMC Act, 1965 on NEET PG score, being based on Section 10A of IMC Act, 1956 and Section 28 of MMC Act, do not warrant any interference and hence, by upholding the said order, the Writ Petition (L) No.24270/2024 is dismissed.

The decision taken by Post Graduate Medical Education Board, in its meeting dated 16th July, 2024 and 29th August 2024 also do not warrant any interference, since it has its foundation in the PGMER 2000 and MSMER-2023, framed to ensure higher standards of medical education across the country.

Needless to state that if CPS is compliant with the regulatory norms for maintaining standards of Post-Graduate Medical Education, on ensuring necessary compliance, with the permission sought from Competent Authority, under the National Medical Commission Act, 2019, it may be able to start the courses, in the manner prescribed.

143. As far as PIL (L) No. 12834/2024 is concerned, which has prayed for quashing and setting aside the notification dated 17/10/2017 issued by the Ministry of Health and Family Welfare for inclusion of the speciality diploma courses in Schedule I of the IMC Act, 1956 and the notification dated 22/01/2018, deleting 36 entries directed to be included by notification dated 17/10/2017 and including six fellowship and one membership course, the Petition is made absolute in terms of prayer clause (a).

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As far as the notification dated 15/03/2024 issued by the Medical Education and Drug Department of State of Maharashtra, including 10 diploma courses in Entry 29 of the Schedule to the MMC Act, 1965, is concerned, the said prayer is also made absolute, since in the wake of the meeting of PGMEB dated 16/07/2024 and 29/08/2024, the decision is taken to discontinue the courses run under the umbrella of CPS, Mumbai.

In any case, we do not find any flaw in the MMC deleting the courses from its schedule, since the Colleges running the courses were not compliant with the PG Regulations.

The challenge to the validity of Section 28 of MMC Act, 1965 is left open, to be assailed in appropriate proceedings.

PIL is made absolute in terms of prayer clauses (e) to (g).

Writ Petition (L) No. 24553/2024 and WP No. 2144/2024 stand dismissed for the reasons recorded above.

All pending Interim Applications in the above petitions stand disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

Ashish/Arati/Manali/Rajshree