

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) No. 7049/2005**

% **Reserved on:** 2<sup>nd</sup> August, 2016  
**Date of Decision :** 9<sup>th</sup> November, 2016

FACULTY ASSOCIATION, MAULANA AZAD MEDICAL  
COLLEGE AND ASSOCIATED HOSPITAL ....Petitioner  
Through Ms. Shobhana Takiar, Mr. Rahul Sharma, Ms.  
Palak Singh, Mr. Varun K. Chopra and Mr. Chinmay  
Bhatt, Advocates.

Versus

UNION OF INDIA & OTHERS .....Respondents  
Through Mr. B.S. Shukla, Advocate for R-1-UOI.  
Mr. Mukul Talwar, Sr. Advocate with Ms. Amita  
Sahni, Advocate for GGSIP University.  
Mr. T. Singhdev and Mr. Biakthansangi and Mr. Tarun  
Verma, Advocates for R-3-MCI.  
Mr. Anurag Mathur, Advocate for University of Delhi.  
Mrs. Jyoti Singh, Sr. Advocate with Mr. Padma Kumar,  
Advocate for respondents 6 to 10.

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MS. JUSTICE SUNITA GUPTA**

**SANJIV KHANNA, J.**

The petitioner-Faculty Association of Maulana Azad Medical College and associated hospitals namely, Lok Nayak Jai Prakash Narayan Hospital, G.B. Pant Hospital, Guru Nanak Eye Centre, Sushruta Trauma Centre, Chacha Nehru Bal Chikitsalaya, Dental College and Hospital and College of Nursing, impugn the notification dated 15<sup>th</sup> March, 2005, as being arbitrary, illegal and beyond the scope of powers and jurisdiction of

the Medical Council of India (MCI, for short), respondent No.3 herein. The petitioners also pray that Guru Gobind Singh Indraprastha University, respondent No. 5 herein, should be restrained from equating non-teaching specialists and consultants at the Safdarjung Hospital and Ram Manohar Lohia Hospital with Professors and Associate Professors as they do not possess the requisite and mandated qualifications prescribed by the Recruitment Rules for the said posts. A consequential prayer is made for setting aside the orders dated 2<sup>nd</sup> May, 2005 and 31<sup>st</sup> May, 2005 and directions are sought that the number of teaching posts in the post-graduate institutions should be increased as per norms to meet the required number.

2. The judgment in the present case was reserved vide order dated 2<sup>nd</sup> August, 2016. The said order reads as under:-

“Learned counsel for the petitioner has made a statement in writing, on instructions received from the petitioner. The statement reads as under:

“Petitioners will be satisfied if this Hon’ble court examines and pronounces it’s verdict on:-

1. Repugnancy of the impugned notification vis-a-vis proviso to Article 309 of the Constitution of India and Minimum Qualifications for Teachers Regulations, 1998.
2. Interpretation and the conceptual working of the impugned notification dated 15.03.2005.
3. Validity of all the subsequent office orders issued pursuant to the impugned notification dated 15.03.2005.”

Learned counsel for the petitioner also clarifies that the proviso to Regulation 11(1) (d) and its violation is not the subject matter of the present writ petition. The said statement is also taken on record.

Arguments heard.  
Judgment reserved.”

3. The issue before us pertains to the notification dated 15<sup>th</sup> March, 2005 and whether the same is repugnant and contrary to law on account of violation of the Minimum Qualification of Teachers Regulations, 1998 (MQT 1998 Regulations, for short). The second issue, which arises for consideration, again relates to the interpretation of the notification dated 15<sup>th</sup> March, 2005 and the validity of the subsequent orders issued pursuant to the notification. As recorded in our order dated 2<sup>th</sup> August, 2016, counsel for the petitioner has stated and clarified that violation of the proviso to Regulation 11(1)(d) of the Post-Graduate Medical Education Regulations, 2000 (hereinafter referred to as PGME Regulations, 2000) are not the subject matter of the present writ petition.

4. The PGME Regulations, 2000 have been framed under the Indian Medical Council Act, 1956 (henceforth referred to as MC Act, 1956, for short) in exercise of the power conferred by Section 33 read with Section 20 of the said Act.

5. Before we comment on the legal matrix, we would first like to examine and elucidate the facts leading to the present writ petition. The Central Health Service Rules, 1996 (CHS Rules, 1996, for short) framed and notified by the Central Government in exercise of the powers vested under Article 309 of the Constitution, contemplated four sub-cadres of the Central Health Service (CHS), namely, teaching sub-cadre, non-teaching sub-cadre, public health service sub-cadre and general duty Medical Officer sub-cadre. In the present case, we are concerned with the teaching sub-cadre and non-teaching sub-cadre in the Central Health Service. The

hierarchy of posts in the teaching sub-cadre is that of Assistant Professor, Associate Professor and Professor. In the non-teaching sub-cadre, the hierarchy is Specialist Grade-II (Junior Scale), Specialist Grade-II (Senior Scale) and Specialist Grade-I.

6. As per Schedule V of the CHS Rules, 1996, the essential requisite qualifications for the post of an Assistant Professor are (i) recognised medical qualifications included in first or second schedule or Part-II of the third schedule of the MC Act, 1956, (ii) post-graduate degree in concerned speciality and (iii) at least three years' teaching experience in the concerned speciality as a Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite post-graduate degree qualification. The note to entry 4 in Part II of Schedule V of the 1996 Rules stipulates that teaching experience in any other post like post of General Duty Medical Officers/Medical Officers shall not be considered for eligibility purposes for recruitment to teaching posts. The minimum or essential eligibility requirements for the post of Specialist Grade-II (Junior Grade) are (i) recognised medical qualification included in the first or the second schedule or Part-II of the third schedule of the MC Act, 1956; (ii) post-graduate degree/diploma in the concerned speciality and (iii) three years' experience in the concerned speciality after obtaining the post-graduate degree or five years experience after obtaining post-graduate diploma. The note therein stipulates that three years' experience in respiratory diseases and respiratory laboratories is required for the post of Physician (Chest and Respiratory Diseases). A reading of the aforesaid essential qualifications would show that there is a difference in the requirements for teaching sub-cadre and non-teaching sub-cadre. In the teaching sub-cadre, the

requirement is of three years teaching experience in the concerned speciality as Lecturer/Tutor/Registrar/Demonstrator/Senior Resident after the requisite post-graduate qualification. In the case of non-teaching sub-cadre, the requirement is three years' experience in the concerned speciality after obtaining the post-graduate degree or five years experience after obtaining a post-graduate diploma.

7. During the course of hearing, the question had arisen whether a post-graduate degree holder could have acquired three years' teaching experience prior to his appointment as an Assistant Professor. A doctor cannot possibly have teaching experience if he is not a member of the teaching sub-cadre. The petitioners have explained that teaching experience as a Senior Resident is counted and considered as meeting the requirement for essential qualification.

8. Promotion to the higher posts in the sub-cadres is also as per the CHS Rules, 1996. Doctors working in the teaching sub-cadre and the non-teaching sub-cadre do not cross over to the other sub-cadre and do not get appointed to the posts in the other sub-cadre, including promotional posts. Pertinently, the Recruitment Rules specify and indicate the posts in each sub-cadre and the number of posts in each promotional stage of the sub-cadre.

9. The PGME Regulations, 2000 were enacted and came into force on 7<sup>th</sup> October, 2000. With the enactment of the said Regulations, post-graduate medical education was, for the first time, regulated by the Medical Council of India (MCI). Regulation 2 of the 2000 Regulations stipulates that the duration of courses for post-graduate medical education

in a broad speciality shall be three years in the case of a degree course, and two years in the case of the diploma course. In the case of super speciality courses, the duration shall be three years after completion of MD/MS. Clause (iii) of Regulation 2 stipulates that the learning in the post-graduate programme shall be essentially autonomous and self-directed and as per clause (vi) training of post-graduate students shall involve learning experience 'derived from' or 'targeted to' the needs of the community. Regulation 3 stipulates that the goal of post-graduate medical education is to produce competent specialists and or medical teachers. Regulation 5 states that the major component of the post-graduate curriculum will be theoretical knowledge, practical and clinical skills, aptitudes including communication skills, training and research, methodological, medical ethics, medico-legal aspects and writing thesis and research articles.

10. Regulation 8 of the PGME Regulations, 2000 is relevant to the present case and the same is reproduced below. The Regulation, as amended up to 10<sup>th</sup> August 2016, reads:-

**“8. GENERAL.-** (1) The institutions recognised by the Medical Council of India for running post-graduate courses prior to the commencement of the Indian Medical Council (Amendment) Act, 1993 and those medical colleges recognised for running Bachelor of Medicines and Bachelor of Surgery (MBBS) course or institutions established by the Central Government for the purpose of imparting post-graduate medical education shall be eligible for starting any post-graduate degree or diploma and higher specialty course.

However, the medical college/institute which is not yet recognised by Medical Council of India for the award of MBBS degree may apply for starting of a postgraduate course in pre

clinical and para clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Forensic Medicine & Community Medicine at the time of third renewal – i.e., alongwith the admission of fourth batch for the MBBS course.

(1A) The Central Government shall exempt any such existing/proposed non-teaching institutions or specialist institution or autonomous body owned and managed by the Central Government/State Government from fulfilling the prescribed provision of having an undergraduate teaching facility, and allow starting Post-graduate medical course.

(2) The maximum number of students for a post-graduate medical course, who can be registered in any recognised department, for training for the award of post-graduate degree or diploma by the affiliating university, shall be determined by the facilities available in the department in terms of infrastructure, teaching staff and clinical teaching material.

(3) Every student, selected for admission to post-graduate medical course in any of the medical institutions on acquiring MBBS degree or an equivalent qualification thereto shall have obtained permanent registration with the Medical Council of India, or any of the State Medical Council(s) or shall obtain the same within a period of one month from the date of his/her admission, failing which his/her admission shall stand cancelled:

Provided that in the case of a foreign national, the Medical Council of India may, on payment of the prescribed fee for registration, grant temporary registration for the duration of the Post Graduate course limited to the Medical College/Institution to which he/she is admitted for the time being exclusively for pursuing the post-graduate studies:

Provided further that temporary registration to such foreign national shall be subject to the condition that such person is duly registered with appropriate registering authority in his

own country wherefrom he has obtained his Basic Medical qualification, and is duly recognized by the corresponding Medical Council or concerned authority.

(4) The students undergoing post-graduate courses shall be exposed to the following :-

a. Basics of statistics to understand and critically evaluate published research paper.

b. Exposure to human behaviour studies.”

Clause (1) of Regulation 8 states that institutions recognised by the MCI for running post-graduate medical courses prior to the commencement of the Indian Medical Council (Amendment) Act, 1993 and those medical colleges recognised for running Bachelor of Medicine and Bachelor of Surgery (MBBS) course or institutions established by the Central Government for imparting post-graduate medical education would be eligible for starting any post-graduate degree or diploma and higher speciality course. Thus, already existing institutions offering post-graduate courses; the recognised medical colleges imparting education authorised to conduct the MBBS degree course, and the institutions established by the Central Government for imparting post-graduate medical education, were made eligible and competent to conduct post-graduate degree, diploma or higher speciality courses. The expression “institutions established by the Central Government for the purpose of imparting post-graduate medical education” is significant and important, for the reason that there were certain institutions established by the Central Government, like the Safdarjung Hospital and Ram Manohar Lohia Hospital, which were

offering and conducting post-graduate medical degree courses but were not imparting undergraduate medical education in the MBBS course.

11. Clause (1A) of Regulation 8 stipulates that the Central Government can exempt any existing or proposed non-teaching institutions or specialist institution or autonomous bodies owned and managed by the Central Government/State Government from the prescribed provision of having an undergraduate teaching facility and permit such institutions to start post-graduate medical courses. Thus, clause (1A) gives the Central Government an overriding power to exempt existing or proposed non-teaching educational institutions or speciality institutions or autonomous body owned and managed by the Central or State Government from fulfilling the requirements of having an undergraduate teaching facility. The sub-Regulation allows continuing of existing or starting of a new post-graduate course by the non-teaching institutions of the Central/State Government.

12. The requirements with regard to teaching facilities, etc. are to be found in Regulation 11 of the PGME Regulations, 2000. Regulation 11.1 pertains to staff-faculty and prior to the enactment of Clause (d) in 2005, reads as under:-

“11.1 Staff-Faculty

- (a) A clinical department or its unit training candidates for broad or super specialities, shall have a minimum of three full time faculty members belonging to the concerned disciplines of whom one shall be a Professor, one Associate Professor/Reader/and one Astt. Professor/Lecturer, possessing the qualification and experience prescribed by the Medical Council of India;

Provided that the second or subsequent additional unit may be headed by an Associate Professor.

Of these faculty members only those who possess a total of eight years teaching experience, out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining post-graduate degree, shall be recognised as post-graduate teachers.

- (b) In each department, training candidates for super specialities, there shall be a minimum of three faculty members with requisite post-graduate qualification and experience—one Professor, one Associate Professor/Reader and one Assistant Professor/Lecturer, with at least two of them holding the degree of D.M./M.Ch. in the concerned discipline.

Of these faculty members only those who possess eight years teaching experience out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining the higher speciality degree shall be recognised as post-graduate teachers:

Provided that in the case of super speciality courses which are being newly instituted relaxation of qualification and experience of post-graduate teachers may be granted by the Medical Council of India for sufficient cause.

- (c) In addition to the faculty staff, the strength of Residents/Registrars/Tutors/Demonstrators, as well as technical and other para medical staff shall be as per the staff strength prescribed for 50 or 100 or 150 students in the “Minimum Requirements for 50/100/150 MBBS Admissions Annually Regulations.”

As per Regulation 11.1, a clinical department or unit training candidates for broad or super specialities is required to have a minimum of three full-time faculty members belonging to a concerned discipline, of whom, one should be a Professor and another Associate Professor/Reader and the third an Assistant Professor/Lecturer. The proviso stipulates that

second or subsequent additional unit may be headed by an Associate Professor. There is also stipulation with regard to years of teaching experience required as Assistant Professor/Lecturer, which will be recognised for the Assistant Professor/Lecturer to work as a post-graduate teacher.

13. The aforesaid rules lead to and created an incompatible and unworkable difficulty for the existing post-graduate institutions exempted under Clause (1A) of Regulation 8 of the PGME Regulations, 2000, for they did not have a teaching sub-cadre and thus, could not meet and satisfy the requirement of the requisite number of Associate Professors/Readers or Assistant Professor/Lecturers. In the said institutions, several reputed and prestigious post-graduate courses for long had been conducted by Super Specialities/Specialists, etc. These post-graduate institutions would have seen de-recognition and closure. Faced with the aforesaid conflict and impracticability, clause (d) to Regulation 11.1 was added by way of amendment by Post-Graduate Medical Education (Amendment) Regulations, 2005 with effect from 16<sup>th</sup> March, 2005. Clause (d) to Regulation 11.1 reads as under:-

“(d) Consultants of specialists who have the experience of working for a period of not less than 18 years and 10 years in the teaching and other general departments in the institution or hospitals, not attached to any medical college, where with the affiliation from any university, postgraduate teaching is being imparted as contemplated under sub-regulation (1A) of regulation 8, shall respectively be eligible to be equated as Professor and Associate Professor in the department concerned. The requisite experience for equating a consultant or specialist working in the super-speciality department of the said institution or hospitals as Professor and Associate Professor shall

respectively be 16 years and 8 years. Consultants or Specialists having postgraduate degree qualification, working in such an institution or hospital, who do not have the said period of experience, shall be eligible to be equated as Assistant Professor in the department concerned.”

A proviso to the clause was added by notification dated 17<sup>th</sup> November, 2009 and the same reads as under:-

“Provided that such conferment of the nomenclature of designation/status of post graduate medical teachers shall be awarded only to those many number of consultants in the concerned hospital/institution so as to fulfil the minimum requirement for imparting Post Graduate Medical education to the sanctioned annual intake of the respective Govt. hospital/institute.”

14. Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 stipulates that consultants or specialists, who have experience of not less than 18/10 years in teaching or other general departments in the institution or hospitals where post-graduate teaching is being imparted, as contemplated under sub-regulation (1A) to Regulation 8, shall be treated as eligible and equated as Professors and Associate Professors, respectively, in the department concerned. Similarly, Consultant or Specialist working in super speciality department of such institution or hospitals, who have 16 and 8 years of experience as consultant or Specialist and have a post-graduate degree qualification, shall be equated as Assistant Professors in the department concerned. Clause (d) to Regulation 11.1 is applicable only to post-graduate teaching imparted under sub-regulation (1A) to Regulation 8 and not any other institutions. As noted above, sub-regulation (1A) to Regulation 8 refers to an existing or proposed non-teaching institution or specialist institution or autonomous body owned and

managed by the Central or State Government, exempt from fulfilling the requirement of having an undergraduate teaching facility. The sub-regulation also allows the starting of a post-graduate medical course in the post-graduate institution. The effect of incorporating clause (d) to Regulation 11.1 is that consultants or specialists, who have 18 or 10 years of experience in institution or hospitals covered under sub-regulation (1A) to Regulation 8 are eligible and equated with Professor/Associate Professors and those Consultants or Specialists with post-graduate degree qualifications and have 16 or 8 years of experience are equated as Assistant Professors. In this manner, by equating the consultants and specialists in the non-teaching sub-cadre, the vexed difficulty has been resolved.

15. The MCI, respondent No. 3 herein, in their reply, have elucidated the impelling need and necessity that had prompted and compelled them to incorporate clause (d) to Regulation 11.1, and subsequently, the proviso to the said clause. There was a genuine and compelling predicament, and unless a practicable solution was worked out, several prestigious and reputed post-graduate courses in institutions exempt under Regulation 8 (1A) would have been discontinued. These courses had always been taught and conducted by Specialists and Consultants of the non-teaching sub-cadre. Sub-clause(d) to clause 11 of the 2000 Regulations was inserted by the notification dated 15<sup>th</sup> March, 2005, to ensure compliance with the minimum requirement for the faculty/staff as per the PGME Regulations, 2000, in the post- graduate institutions owned and managed by the Central Government, not having undergraduate teaching faculty. The proviso to the clause was added owing to the allegation of conferment of teaching

designations to a number largely in excess of the minimum requirement. Thus, the proviso effectuated the need felt by the respondent No.3-MCI to bring an amendment in order to ensure there was no ambiguity with regard to the letter and spirit of the notification dated 15<sup>th</sup> March, 2005, and the import of clause (d) to Regulation 11.1. After seeking approval of the Government of India, the notification dated 17<sup>th</sup> November, 2009 was issued and the proviso to Regulation 11.1(d) was added to the PGME Regulations, 2000.

16. Clause (d) to Regulation 11.1 is somewhat confusing. Sub-regulation (1A) of Regulation 8 applies to non-teaching institutions or specialist institution or autonomous bodies owned and managed by the Central or State Government. It does not, by clear and categorical implication, apply to teaching institutions of the Central or State Government. Neither does it apply to those institutions which are not managed by the Central or State Government. Thus, without any doubt or debate, sub-Regulation (1A) of Regulation 8 will apply where an institution of the Central or State Government is imparting post-graduate medical education course which is not attached to a medical college and does not have an undergraduate teaching faculty. It is in this context and background that we have to interpret the expression “not attached to any medical college” used in the first part of clause (d) to Regulation 11.1. This expression “not attached to any medical college”, according to us, refers to the consultant or specialists and not to the institution imparting post-graduate medical course.

17. The aforesaid interpretation given by us to clause (d) to Regulation 11.1 is based on semantics as well as contextual construction<sup>1</sup>. Clause (d) refers to Consultants or Specialists having prior work experience for a period of not less than eighteen and ten years in the teaching and other general departments in the institutions or hospitals. Thereafter, between the two commas, the phrase “not attached to any medical college” is used. The use of the comma before the word “not” and after the word “college”, is with the intent to ensure that the phrase “not attached to any medical college” is read in a disjunctive manner, not as a description of the institution or hospitals, albeit as referring to the Consultants or the Specialists, who are not attached to any medical college. The phrase would not qualify and refer to the institutions or hospitals. Read in this manner, there would be no confusion in appreciating and understanding clause (d) to Regulation 11.1. Clause (d) of Regulation 11.1 would read Consultants and Specialists not attached to any medical college and those who have experience of working for a period of not less than eighteen

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<sup>1</sup> “Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.” *Reserve Bank Of India vs. Peerless General Finance & Investment Co. Ltd.* (1987) 1 SCC 424, p.450; Affirmed in (2015) 1 SCC 166 p.184

years and ten years in the teaching and other general departments in institution or hospitals engaged in post-graduate teaching under sub-regulation (1A) to Regulation 8 shall be eligible to be equated as Professor or Associate Professor in the department concerned. Similarly, a Consultant or Specialist not attached to a medical college, working in the Super Speciality Department of the institution or hospital imparting post-graduate teaching, and notified under sub-rule (1A) to Regulation 8, shall be eligible to be equated as Assistant Professor in the department concerned. Contextually, the aforesaid interpretation would be in consonance with sub-regulation (1A) to Regulation 8 and clause (d) to Regulation 11.1. would be read harmoniously with the former clause. As noticed above, sub-clause (1A) to Regulation 8 empowers the Central Government to exempt existing or proposed non-teaching institutions or specialist institutions or autonomous bodies owned or managed by the Central or the State Government from fulfilling the prescribed norms of having an undergraduate teaching faculty and also to allow starting of a post-graduate medical course.<sup>2</sup>

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<sup>2</sup> " Grammar and punctuation are hapless victims of the pace of life and I prefer in this case not to go merely by the commas used in clause (c) because, though they seem to me to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other gadgets of punctuation would have helped make the meaning of the clause clear beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. I therefore consider it more safe and satisfactory to discover the true meaning of clause (c) by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which is visited by penal consequences." *State of West Bengal vs. Swapan Kumar Guha* (1982) 1 SCC 561, p.568

18. One of the primary contentions raised by the petitioners was to draw a distinction between the experience of teaching medicine and the practice of medicine. The teaching sub-cadre and non-teaching sub-cadre, including the promotional hierarchy, were and are distinct and separate and for joining the teaching sub-cadre as Assistant Professor, teaching experience of three years is the *sine qua non*, whereas in the non-teaching sub-cadre, clinical experience and not teaching experience is prescribed. The nature of duties of the teaching and non-teaching sub-cadres, it was submitted, would significantly differ for teaching sub-cadre which involved teaching and research activities in addition to the clinical work, whereas non-teaching sub-cadre is pre-eminently involved in clinical work. The “hospital bed instructions”, it was urged by the petitioners, cannot be a substituted for, and equated with, teaching.

19. The said contention, though appears meritorious, cannot be a ground to strike down clause (d) to Regulation 11.1 of the PGME Regulations, 2000. The aforesaid regulations have been framed by the MCI, who were conscious and aware of nature of post-graduate courses, including the teaching and training which is to be imparted. The said courses do not require and mandate teaching in a narrow, conservative and strict sense. Post-graduate courses do not consist merely of didactic, oral classroom lectures. They require and postulate hands-on training in operation theatres, direct management vide examination and treatment of patients. This post-graduate training is interdisciplinary and requires interaction with different departments. This aspect has been rightly highlighted by the Union of India in their counter affidavit as well as the affidavit filed by the MCI.

20. Regulation 3.2 of the PGME Regulations, 2000 elucidates the general objective of post-graduate training and what is expected and required from students undergoing the said training at the end of the programme. The Regulation reads as under:-

**“3.2 GENERAL OBJECTIVES OF POST-GRADUATE TRAINING EXPECTED FROM STUDENTS AT THE END OF POST-GRADUATE TRAINING**

At the end of the postgraduate training in the discipline concerned the student shall be able to;

- i. Recognize the importance to the concerned speciality in the context of the health needs of the community and the national priorities in the health section.
- ii. Practice the speciality concerned ethically and in step with the principles of primary health care.
- iii. Demonstrate sufficient understanding of the basic sciences relevant to the concerned speciality.
- iv. Identify social, economic, environmental, biological and emotional determinants of health in a given case, and take them into account while planning therapeutic, rehabilitative, preventive and primitive measure/strategies.
- v. Diagnose and manage majority of the conditions in the speciality concerned on the basis of clinical assessment, and appropriately selected and conducted investigations.
- vi. Plan and advise measures for the prevention and rehabilitation of patients suffering from disease and disability related to the speciality.
- vii. Demonstrate skills in documentation of individual case details as well as morbidity and mortality rate relevant to the assigned situation.

- viii. Demonstrate empathy and humane approach towards patients and their families and exhibit interpersonal behaviour in accordance with the societal norms and expectations.
- ix. Play the assigned role in the implementation of national health programme, effectively and responsibly.
- x. Organize and supervise the chosen/assigned health care services demonstrating adequate managerial skills in the clinic/hospital or the field situation.
- xi. Develop skills as a self-directed learner, recognize continuing education needs; select and use appropriate learning resources.
- xii. Demonstrate competence in basic concepts of research methodology and epidemiology, and be able to critically analyze relevant published research literature.
- xiii. Develop skills in using educational methods and techniques as applicable to the teaching of medical/nursing students, general physicians and paramedical health workers.
- xiv. Function as an effective leader of a health team engaged in health care, research or training.”

A reading of the fourteen clauses of Regulation 3.2 would show that the emphasis in post-graduate courses is on the clinical expertise and experience in treatment of patients and not on theoretical study. Doctors eligible for post-graduate training have already completed the MBBS course and have worked as Residents.

21. The post-graduate course in the Safdarjung Hospital was started in 1959 and in the R.M. L. Hospital, earlier known as Willingdon Hospital, in 1965. These post-graduate courses were then affiliated with the University of Delhi. With the enforcement of PGME Regulations, 2000, the post-graduate courses in Safdarjung Hospital and RML Hospital would have been discontinued for the said hospitals were not affiliated with a medical

college and they did not have undergraduate teaching faculty or for that matter the post-graduate teaching faculty required under the PGME Regulations, 2000. It is for this reason that the University of Delhi withdrew the affiliation granted to the post-graduate courses offered by the Safdarjung Hospital and the R.M.L. Hospital in 2004. This had prompted the undergraduate students seeking admission, to file writ petitions in the Delhi High Court. The High Court had then directed the Ministry of Health and Family Welfare to find a solution. The Central Government was conscious and aware of the fact that the Safdarjung Hospital and the R.M.L. Hospital had been imparting and conducting post-graduate medical courses for decades and there was ever increasing need and demand for post-graduate seats and post-graduate specialists in the country. Therefore, the Central Government decided to utilise the infrastructural facilities in the Safdarjung Hospital and the R.M.L. Hospital for providing post-graduate medical education in public interest. The Safdarjung Hospital was never affiliated to, and did not have any medical college attached to it until 2007. The Vardhman Mahavir Medical College was affiliated and attached to the Safdarjung Hospital in 2007. R.M.L. Hospital is not attached or affiliated with any medical college and is functioning as an independent hospital (we have separately subsequently examined the issue whether R.M.L. Hospital can be treated as attached to Lady Hardinge Medical College and rejected the said plea of the petitioners). The respondents have highlighted, without rebuttal, that the post-graduate courses offered in the Safdarjung Hospital and the R.M.L. Hospital, from the beginning in 1959/1965, were conducted and taught by the non-teaching sub-cadre of Specialists and Consultants belonging to the Central Health Service.

Several doctors, now employed in the teaching sub-care of the Central Health Service, were themselves beneficiaries of the post-graduate courses in the Safdarjung Hospital and R.M.L. Hospital. They were taught and trained by the non-teaching sub-cadre.

22. The objective of clause (d) to Regulation 11.1 is to provide clinical teaching to post-graduate medical students in the already existing post-graduate institutions, which were attached to or a part of running and operational hospitals of national repute, and having a high patient inflow. There being an acute shortage of post-graduate medical seats, exceptions have been made for these post-graduate institutions belonging to the Central and State Government, which did not have undergraduate teaching faculty because they were not affiliated and attached to medical colleges, by utilising the services of doctors with adequate post-graduate experience and super-speciality degrees. Clause 11 and Clause 12 of the PGME Regulations, 2000 provide for a stringent criterion in terms of the number of teachers required to meet the minimum requisite for post-graduate medical programmes. As per the Regulations, the ratio of number of students and recognised Post Graduate teachers shall be 1:1 and in no circumstances can more than three students be admitted to a unit per year. But for incorporation of clause (d) to Regulation 11.1, in view of the shortage of teaching faculty, these sought after courses would have closed down and stopped. This would have been a national loss. Indeed, the said extreme argument was not made by the Senior Advocate appearing for the petitioners. The contention raised by the petitioners was that the 2005 amendment was limited in operation to hospitals/institutes imparting post-graduate education where such institutions were not attached to the

medical college. Reliance was placed on the language and the wording of clause (d) to Regulation 11.1. We have already interpreted clause (d) to Regulation 11.1 and with reference to the phrase “not attached to a medical college” held that reference is to the Consultants or the Specialists, and not the institutions or hospitals, which have been granted exemption under sub-regulation (1A) to Regulation 8 of the PGME Regulations, 2000.

23. This brings us to the import of the proviso to Regulation 11.1 (d), which was introduced with effect from 17<sup>th</sup> November, 2009. The proviso serves two purposes. It states that conferment of nomenclature of designation/status of post-graduate medical teachers shall be only to that number of consultants so as to fulfil the minimum requirements of imparting post-graduate medical education to the sanctioned intake. Therefore, conferment of nomenclature under clause (d) to Regulation 11.1 would be restricted and limited to the number of Specialists and Consultants in the concerned hospital or institution as required to fulfil the minimum requirement of the PGME Regulations, 2000. Excessive designations would thus be impermissible under the proviso. Secondly, the proviso itself would indicate and establish that the designation under clause (d) to Regulation 11.1 was not a onetime exercise. The clear intent to this effect can be inferred contextually as well as from the language of the proviso. A post-graduate medical course in a hospital not affiliated with any medical college at the initial stage and subsequently affiliated with a medical college, could still face shortage of teaching sub-cadre at the post graduate level. It would take time to have requisite number of Professors, Associate Professors or even Assistant Professors in the specific specialities of the post-graduate courses. Promotions in the

teaching sub-cadre depend upon years of experience in the posts lower in the hierarchy. Therefore, the contention of the petitioner that clause (d) to Regulation 11.1 mandates only one time exercise is not correct and has to be rejected as it would nullify the intent and purpose of incorporating the said clause and would also run counter to the proviso. As elucidated above, the expression “not attached to any medical college” is with reference to the Specialists and Consultants, and not descriptive of and with reference to the post-graduate institutions. Subsequent affiliation or attachment to a Medical college would not, therefore, disqualify the existing post-graduate institutions that were not earlier attached to a medical college. However, the petitioners are correct when they urge and argue that in the garb of clause (d) to Regulation 11.1 excessive or more than necessary designations should not be awarded and made.

24. At this stage, we would like to refer to paragraph 2 of the present judgment which records the statement made by the counsel for the petitioner that the violation of the proviso is not the subject matter of the present writ petition as the issue whether designations made under clause (d) to Regulation 11.1 are in excess or beyond the requirement is disputed in a separate set of writ petitions. Any adjudication on the said aspect would require factual examination with regard to the requirements under the PGME Regulations, 2000, as well as the intake of the students in the post-graduate courses, strength of the non-teaching and teaching sub-cadres, etc. We have, therefore, deliberately not elucidated and gone into the said factual issues and aspects in view of the statement made by the counsel for the petitioner that the proviso to Regulation 11(1)(d) and its violation was not the subject matter of the present petition. We have

interpreted the proviso to Regulation 11(1)(d) to the extent as is required and necessary in the facts and circumstances of the present case. We also clarify that the counsel for the petitioner and the respondent had addressed arguments relating to the interpretation of the proviso, and not on the factual aspects and violation of the proviso.

25. One of the contentions raised by the respondents (other than the MCI), was that the term “medical college” as defined in the Act, means a college established under Section 10A. Explanation to sub-section (1) to Section 10A states that the expression “person” used in sub-section (1) would not include the Central Government, but would include any university or trust. It was thus submitted that a medical college established by the Central Government would not be a medical college within the meaning of the Act and therefore, the requirement to be attached to a recognised medical college is not satisfied even if the post-graduate institution is attached with a Central Government medical college. This submission is wrong and has to be rejected. Explanation 1, which excludes Central Government from the expression “person”, is restricted in its application to sub-section (1) of Section 10A of the Act. It does not follow that the medical college established by the Central Government would not be a medical college within the meaning of the Act. Further, sub-section (1) to Section 10A consists of clauses (a) and (b). Clause (a) states that no person shall establish a medical college except as stated. Explanation 1 explains and elucidates on the word “person” used in clause (a). Clause (b) stipulates that no medical college shall open a new or higher course of study or training, including post-graduate course or increase its admission capacity in any course and study of training, including post-graduate

course, except with the previous permission of the Central Government obtained in accordance with the provisions of this Section. Clause (b) uses the expression/term “medical college” and does not refer to a person. We need not examine the effect thereof in the present judgment or elucidate further as this is academic for the purpose of present litigation. However, we would again state that this contention of the respondents relying upon Section 10A of the Act is unacceptable.

26. Another contention raised by the petitioners is that the Vardhaman Mahavir Medical College was attached to Safdarjung Hospital in 2001 and Lady Hardinge Medical College was already attached to R.M.L. Hospital. Since the said hospitals were already attached to medical colleges, clause (1A) of Regulation 8 and clause (d) to Regulation 11.1 would not be applicable, has to be rejected. The petitioner has also relied upon responses received under the Right to Information Act, 2005 vide letter dated 14<sup>th</sup> January, 2016 which states that Vardhman Mahavir Medical College was attached to the Safdarjung Hospital since November 2001. The contention is denied by the respondents, who state that Lady Hardinge Medical College is not attached to R.M.L. Hospital or the Post-Graduate Institute of Medical Education and Research( PGIMER), which is imparting the post-graduate course. PGIMER is separate and distinct from R.M.L. Hospital. Reliance is placed on the letter dated 2<sup>nd</sup> August, 2016 of the Ministry of Health & Family Welfare, Government of India, which states that the R.M.L. Hospital is separate and not attached to Lady Hardinge Medical College. The respondents submit that about two decades back, Lady Hardinge Medical College did not have any male patients and students were permitted and allowed to come to R.M.L. Hospital so as to

be given the opportunity and exposure to examine male patients only in the medicine, surgery and orthopaedics departments. It would be incorrect to accept the contention that R.M.L. Hospital or PGIMER are hospitals connected and attached to Lady Hardinge Medical College. The heads of these institutions are different as are the budgets. The respondents have also stated that the Vardhman Mahavir Medical College was granted recognition as a medical college after 2007..

27. The last and significant contention of the petitioner is that there is a conflict between Regulation 11.1(d) of the PGME Regulations, 2000 and the CHS Rules, 1976 framed under Article 309 of the Constitution. The argument, as noticed above, is predicated on the foundation that the teaching and non-teaching sub-cadres are separate and distinct and, therefore, Consultants and Specialists in the non-teaching sub-cadre cannot be designated as Assistant Professor, Associate Professor or Professor. In this context, reference is made to the judgment of the Supreme Court in ***Government of Andhra Pradesh versus Dr. R. Murli Babu Rao***, (1998) 2 SCC 386. During the course of arguments our attention was drawn to paragraph 16 in particular in ***Dr. R. Murli Babu Rao*** (supra), which reads as under:-

“A *fortiori*, the recommendations made by the Council or the Regulations framed by it are only recommendatory and not mandatory. It is not for the Council to prescribe qualifications for recruitment to posts of Professors, Readers and Lecturers. It can only lay down broad guidelines therefore. Such qualifications have necessarily to be prescribed by framing of Rules under the proviso to Article 309.”

28. In the context of the aforesaid quotation, it was submitted that if there is a conflict between the CHS Rules and the PGME Regulations, 2000, the Rules would prevail and override the Regulations. It was highlighted that the decision in the case of **Dr. R. Murli Babu Rao** (supra) has been followed in number of cases, including **Dr. Sandhya Jain versus Dr. Subhash Garg and Another**, (1999) 8 SCC 449 and in the case of **Dr. Preeti Srivastava and Another versus State of M.P. and Others**, (1999) 7 SCC 120, wherein the Constitution Bench had observed that insofar as post-graduate courses are concerned, power of the MCI to prescribe minimum standards was only advisory in nature and not of binding character.

29. The aforesaid submissions made by the petitioner, we would observe, are substantially incorrect. In **State of Kerala versus Kumari T.P. Roshana and Another**, (1979) 1 SCC 572, the Supreme Court held that the MCI is an expert body constituted under the Act to control minimum standards of medical education and to regulate their observance. The Council has the power to prescribe minimum standards of medical education and has the implicit power to supervise the qualifications and eligibility standards for admission to medical institutions. It has the power of overall invigilation to prevent sub-standard entrance qualification for medical courses. A more lucid and a direct discussion on the legal dictum in the decision in **Dr. R. Murli Babu Rao** (supra) is to be found in **Medical Council of India versus State of Karnataka and Others**, (1998) 6 SCC 131, a decision by the three-Judge Bench of the Supreme Court. In the said case, it was alleged that medical colleges in the State of Karnataka had been permitted by the State Government to admit students far in excess of

the admission capacities fixed by the Medical Council. The MCI was aggrieved by the decision of a Division Bench of the Karnataka High Court, which had held that prior to insertion of Sections 10A, 10B and 10C to the Act in 1993, neither the Central Government nor the MCI could fix admission capacity in medical colleges in the State, for the authority was vested in the State of Karnataka as per the State enactments. The Division Bench had relied upon decision in the case of *State of Madhya Pradesh versus Nivedita Jain*, (1981) 4 SCC 296, a decision which had been quoted and relied upon in *Dr. R. Murli Babu Rao* (supra). Referring to Section 33 of the Act, which empowers the MCI to frame regulations, the Supreme Court accepted the argument raised by the Council that the Supreme Court in *Nivedita Jain* (supra) on interpreting Regulations (i) and (ii) had held that Regulation (i) was mandatory and Regulation (ii) was directory. The reason being the language employed in the regulation, which had indicated that the MCI itself wanted to treat the regulation as directory. It was held as under:-

“18. The Court said that it was of the opinion that the use of the words “should be” in Regulation II was deliberate and was intended to indicate the intention of the Medical Council that it was only in the nature of recommendation. Regulation I, which lays down conditions or qualifications for admission into the medical course, comes within the competence of the Medical Council under Section 33 of the Medical Council Act and it is mandatory and the Medical Council has used language to manifest the mandatory character clearly, whereas Regulation II, which deals with process or procedure for selection from amongst eligible candidates for admission, is merely in the nature of a recommendation and directory in nature, as laying down the process or procedure for selection or admission of candidates out of the candidates eligible or qualified for such admission under Regulation I. The Court said that from the

provisions of the Medical Council Act, it was apparent that the authority of the Medical Council extends to the sphere of maintaining proper medical standards in medical colleges or institutions necessary for obtaining recognised medical qualifications and by virtue of this authority, it may be open to the Medical Council to lay down the minimum educational qualification required for the students seeking admission into medical colleges. The Medical Council was authorised to prescribe minimum standards of medical education required for granting recognized medical qualification including standards of postgraduate medical education. The Medical Council Act envisages that if it appears to the Medical Council that the course of study and examination to be undergone in, or the proficiency required from students at any examination held by any university or medical institution do not conform to the standard prescribed by the Medical Council or that the staff, equipment, accommodation, training and other facilities for instructions and training provided in such university or medical institutions or in any college or other institution affiliated to that university do not conform to the standards prescribed by the Medical Council, it will make representation to that effect to the Central Government and on the consideration of the representation made by the Medical Council, the Central Government may take action in terms of the provisions contained in Section 19 of the Medical Council Act. The Medical Council Act also empowers the Medical Council to take various measures to enable it to judge whether proper medical standard is being maintained in particular institutions or not.”

30. Reference was also made by the petitioners to *Ajay Kumar Singh and Others versus State of Bihar and Others*, (1994) 4 SCC 401, which had expressed the view that the power of the MCI to prescribe minimum standards of medical education was only advisory in nature and not of a binding character. It was held that while regulation of admission to medical courses may be incidental to the power under entry 66 List I, it is integral to the power to regulate courses of study in medicine which is

traceable to Entry 25 in List III or the Concurrent List. Entry 66 List I ought not to be construed in isolation and must be read with Entry 25 List III. The states which establish and maintain these institutions have the power to regulate all aspects and affairs of the institutions and the Indian Medical Council Act does not purport to regulate the admissions or admission policy to postgraduate medical courses. The field is thus left free to be regulated by the State. The State can make a law or an executive rule; and in the said case, it has chosen to make the executive rule.

31. However, a direct and categorical finding is recorded in the Constitution Bench decision in the case of *Dr. Preeti Srivastava and Another* (supra) wherein *Ajay Kumar Singh and Others* (supra) was overruled observing that the interpretation given therein that the MCI's power to prescribe minimum standards of medical education at the post-graduate level was only advisory in nature and not of binding character, was unacceptable. In terms of power under Section 10 read with Section 33 of the Act, MCI can frame regulations, which govern post-graduate medical education and once the said regulations are framed, they would fall and would be in exercise of power under Entry 66 of List I and the power of the States under Entry 25 List III is subject to Entry 66 of List I. It was held:-

“55. We do not agree with this interpretation put on Section 20 of the Indian Medical Council Act, 1956. Section 20(1) (set out earlier) is in three parts. The first part provides that the Council may *prescribe* standards of postgraduate medical education for the guidance of universities. The second part of sub-section (1) says that the Council may *advise* universities in the matter of securing uniform standards for postgraduate medical education throughout. The last part of sub-section (1) enables the Central

Government to constitute from amongst the members of the Council, a Postgraduate Medical Education Committee. The first part of sub-section (1) empowers the Council to prescribe standards of postgraduate medical education for the guidance of universities. Therefore, the universities have to be guided by the standards prescribed by the Medical Council and must shape their programmes accordingly. The scheme of the Indian Medical Council Act, 1956 does not give an option to the universities to follow or not to follow the standards laid down by the Indian Medical Council. For example, the medical qualifications granted by a university or a medical institution have to be recognised under the Indian Medical Council Act, 1956. Unless the qualifications are so recognised, the students who qualify will not be able to practise. Before granting such recognition, a power is given to the Medical Council under Section 16 to ask for information as to the courses of study and examinations. The universities are bound to furnish the information so required by the Council. The Postgraduate Medical Committee is also under Section 17, entitled to appoint Medical Inspectors to inspect any medical institution, college, hospital or other institution where medical education is given or to attend any examination held by any university or medical institution before recommending the medical qualification granted by that university or medical institution. Under Section 19, if a report of the Committee is unsatisfactory the Medical Council may withdraw recognition granted to a medical qualification of any medical institution or university concerned in the manner provided in Section 19. Section 19-A enables the Council to prescribe minimum standards of medical education required for granting recognised medical qualifications other than postgraduate medical qualifications by the universities or medical institutions, while Section 20 gives a power to the Council to prescribe minimum standards of postgraduate medical education. The universities must necessarily be guided by the standards prescribed under Section 20(1) if their degrees or diplomas are to be recognised under the Medical Council Act. We, therefore, disagree with and overrule the finding given in *Ajay Kumar Singh v. State of Bihar* [(1994) 4 SCC 401] to the effect that the standards of postgraduate medical education

prescribed by the Medical Council of India are merely directory and the universities are not bound to comply with the standards so prescribed.

**56.** In *State of M.P. v. Nivedita Jain* [(1981) 4 SCC 296] the provisions of the Indian Medical Council Act and the regulations framed for undergraduate medical courses were considered by the Court. The Court said that while Regulation I was mandatory, Regulation II was only recommendatory and need not be followed. We do not agree with this line of reasoning for the reasons which we have set out above.

**57.** In the case of *Medical Council of India v. State of Karnataka* [(1998) 6 SCC 131] a Bench of three Judges of this Court has distinguished the observations made in *Nivedita Jain* [(1981) 4 SCC 296]. It has also disagreed with *Ajay Kumar Singh v. State of Bihar* [(1994) 4 SCC 401] and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in *State of Kerala v. T.P. Roshana* [(1979) 1 SCC 572, 580] (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.”

32. Similarly, in *State of Punjab versus Dayanand Medical College and Hospital and Others*, (2001) 8 SCC 664, referring to the decision in the case of *Dr. Preeti Srivastava and Another* (supra), it was held that it was not open to the university or the Government to dilute the standard by

fixing marks lower than what had been set by the MCI. In case of difficulty, they ought to approach the MCI for fixing of appropriate standards in that regard, but the State cannot frame a scheme reducing the standard in violation of the terms of the regulations framed by the MCI. Similar elucidation is to be found in *State of M.P. and Others versus Gopal D. Tirthani and Others*, (2003) 7 SCC 83, *Harish Verma and Others versus Ajay Srivastava and Another*, (2003) 8 SCC 69 and *Sudhir N. and Others versus State of Kerala and Others*, (2015) 6 SCC 685.

33. We have also examined the CHS Rules. The Rules stipulate that the method of recruitment, in the field of selection, for promotion including minimum qualifying service in the immediate lower grade or lower grades in the respective sub-cadres and specialities within the sub-cadres concerned, shall be as specified in Schedule III (see sub-rule (2) to Rule 7). Further, seniority of members in the service appointed in the grade in the respective sub-cadres or respective speciality of the sub-cadres is to be maintained as per Rule 9. Schedule I to the CHS Rules stipulates the pay scales. Schedule II postulates and states the authorised strength of each sub-cadre, including the hierarchy of the promotional posts. Schedule III provides for method of recruitment, field of selection for promotion and the minimum qualifying service in the immediate grade or lower grades. The Schedule separately refers to teaching, non-teaching, public health and general duty sub-cadres. Schedule IV prescribes for constitution of the departmental promotion committee for promotion and confirmation depending upon the sub-cadre. Schedule V deals with minimum educational and other qualifications, experience and age limit for direct recruitment to Group A duty post in CHS. Eligibility requirements are

fixed for the different sub-cadres. Schedule VI gives list of recognised post-graduate qualifications for recruitment to Group A post in CHS.

34. We do not think that there is any conflict or repugnancy between Regulation 11.1(d) and CHS Rules and the sub-cadres created thereunder. Clause (d) to Regulation 11.1 does not permit or hold that there would be transfer or change of the sub-cadre. It grants and permits a designation for the purpose of the PGME Regulations, 2000. It ensures that there is no violation of the PGME Regulations, 2000 in post-graduate institutions covered by clause (1A) to Regulation 8 as they do not have the post-graduate faculty, but have Consultants and Specialists. These Consultants Specialists are given the said equation or equivalence only for the purpose of the PGME Regulations. The effect thereof would be that the doctors i.e. Consultants and Specialists belonging to the non-teaching sub-cadre cannot and would not occupy any post or position in the teaching sub-cadre. Promotions in the two sub-cadres and the number of posts do not undergo a change and are not affected. The Consultants and Specialists in the non-teaching sub-cadre would continue to remain members of the non-teaching sub-cadre. Thus, the PGME Regulations, 2000 and the CHS Rules operate in different fields and it would be incorrect and wrong to hold that by the said designations or equivalence granted for the purpose of PGME Regulations, 2000, the Consultants and Specialists become members of the teaching sub-cadre or become entitled to promotions in the teaching sub-cadre. The respondents in their arguments have clearly stated that the equivalence or designation does not amount to a transfer or change in the sub-cadre and the teaching and non-teaching sub-cadres remain distinct and cannot intermingle as such.

35. In view of the aforesaid reasoning, we would record our conclusions as under:-

(i) Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 treats Consultants or Specialists having the requisite experience not attached to medical colleges but post-graduate institutions covered by Sub-Regulation 1A to Regulation 8 as Professors, Associate Professors and Assistant Professors. The petitioners are unable to establish and show that clause (d) to Regulation 11.1 is illegal or bad in law. On the other hand, the respondents have been able to show and establish the reason and cause why the aforesaid clause was enacted by the MCI. The object and purpose were to allow and permit post-graduate courses already in existence should not close down and stop pursuant to the promulgation of PGME Regulations, 2000.

(ii) Clause (d) of Regulation 11.1 of the PGME Regulations, 2000 is not in conflict with the CHS Rules in any manner. The teaching and non-teaching cadres remain distinct and separate. Consultants and Specialists in the non-teaching sub-cadre continue to remain members of the said cadre and are not entitled to occupy posts meant exclusively for the teaching sub-cadre. The PGME Regulations, 2000 and CHS Rules operate in different fields and the equivalence granted for the purpose of the PGME Regulations, 2000 would not affect members of the teaching sub-cadres as it does not amount to transfer or change in sub-cadres.

(iii) Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 does not postulate one-time exception and there can be subsequent

designations as long as there is a shortage of Professors, Associate Professors or Assistant Professors belonging to the teaching sub-cadres.

(iv) Designations for the purpose of clause (d) to Regulation 11.1 of the PGME Regulations, 2000 can be only awarded to Consultants and Specialists who fulfil the minimum requirement for imparting post-graduate medical education to the sanctioned annual intake in the respective government institutions/hospitals and cannot exceed the said numbers. Violation of the proviso and the question whether there are excessive designations has not been raised and argued before us. The petitioners have stated that this is not a subject matter of the present writ petition and has been raised in other writ petition pending in the High Court. We have, therefore, not examined the factual matrix and the question whether there has been a violation of the proviso to Regulation 11.1(d) of the PGME Regulations, 2000.

36. The writ petition is disposed of in the aforesaid terms. In the facts of the case, there would be no order as to costs.

**(SANJIV KHANNA)**  
**JUDGE**

**(SUNITA GUPTA)**  
**JUDGE**

**NOVEMBER 9<sup>th</sup>, 2016**  
**VKR/ssn**