

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITIONS NO. 16610 & 31521 OF 2016 AND 28699 OF 2017

COMMON ORDER:

Writ Petition No. 16610 of 2016 has been filed seeking a *mandamus* to declare the action of the 1st respondent State of Andhra Pradesh in not including the petitioners institutions (which are already recognized by the A.P. Para Medical Board) for the purpose of admission of students into paramedical courses for the year 2016-17, as per Notification No. 002/APPMB/Admissions/AY 2016-17, dated 18.05.2016, as arbitrary and illegal.

Writ Petition No. 31521 of 2016 has been filed questioning the proceedings dated 16.08.2016 of the 2nd respondent Secretary whereby and whereunder, the certificates of recognition granted in favour of the petitioner institutions have been withdrawn with immediate effect.

Writ Petition No. 28869 of 2017 has been filed to declare the action of the 2nd respondent Para Medical Board in not including the name of the petitioner institutions in the list of intake capacity of the seats available in the recognized private para medical institutions appended to Notification No. 002/APPMB/Admission/AY 2017-18, dated 10.08.2017 as illegal and arbitrary and consequently, to direct the respondents to include the name of the petitioner institutions in the list of recognized institutions pursuant to the notification dated 10.08.2017 and allot the students for the academic year 2017-18.

At the outset, it is to be noted that a large number of cases have been filed questioning the very notifications dated 18.05.2016 and 10.08.2017 and withdrawal of the recognition granted to some of the institutions. Hence, the above three cases have been taken up to represent the reliefs that are being claimed in each of the category. The

facts in all the cases being one and the same, it would suffice if reference is made to the one in Writ Petition No. 16610 of 2016.

The case of the petitioner institutions is that they have been established under valid Government Orders and have been recognised by the Para Medical Board to impart para medical sciences, such as Diploma in Medical Lab Technology (Lab Technician), Diploma in Multi-purpose Health Assistant, Diploma in Medical Imaging Technology and Diploma in Anaesthesia Technology etcetera.

In the affidavit filed in support of this Writ Petition, it has been stated that the petitioners have already filed Writ Petition No. 4273 of 20167 seeking a direction to the 1st respondent to issue admission notification for the academic year 2015-16 and the said Writ Petition is pending. In the said Writ Petition, the 1st respondent had filed a counter-affidavit, but however, there is no averment to the effect that the petitioner institutions are not eligible to impart the para medical courses. The 1st respondent issued the admission notification for the academic year 2016-17 on 18.05.2016, whereunder, the right to admit students into para medical courses was restricted to only 234 institutions in the State. It is further stated that the admission notification is only enabling the respective recognized paramedical institutions to admit students as per the sanctioned intake into the respective discipline and there is no distinction between the institutions permitted by the Para Medical Board and the ones which are recognized by the State Government. Hence, this Writ Petition is filed by the petitioners on the ground that they, being recognized by the Para Medical Board, are entitled to admit the students for the academic year 2016-17, in terms of the admission notification of the 1st respondent, dated 18.05.2016.

The 1st respondent government filed a counter-affidavit.

The 2nd respondent A.P. Para Medical Board has also filed a counter-affidavit, wherein it has been stated that a para medical technician is a professional, who helps the doctor in specialized areas and facilitates for better diagnostics, treatment and therapy. The increase in number of patients, variety of diseases and the demand for immense treatment have paved the way for the para medical professionals. Hence, they should undergo proper training in institutions having relevant clinical facilities, faculty and equipment. It is further submitted that to regulate the procedure of granting permission to private institutions to start para medical courses to impart proper training to the persons as para medical technicians, in exercise of the powers conferred by Section 99 of the Andhra Pradesh Education Act, 1982, the State Government formulated the rules regulating establishment of private para medical training institutions and for admission there into *vide* G.O.Ms.No. 304, Health, Medical & Family Welfare (K2) Department, dated 07.08.1997, called as '*The Andhra Pradesh Private Para Medical Training Institutions (Grant of Permission and Regulation of Admissions into Private Institutions) Rules, 1997*'. As per Rule 10 of the said Rules, the government will issue the 'Essentiality Certificate' after satisfying itself about the requirements as specified by the Committee constituted by the government and its approval shall be deemed to be permitted/approved by the government. According to Rule 14, the existing institutions, if found not fulfilled certain terms and conditions stipulated in these Rules, shall fulfil the same within a period of one year from the date of issue of the Rules. It is further submitted that the Andhra Pradesh Para Medical Board Act, 2006 provides for registration of institutions, imparting training to technicians in the State of Andhra Pradesh and prescribes their qualifications. The various provisions of the Act make it clear that only the Applications received pursuant to the notification issued by the

government inviting applications, shall be considered by the High Power Committee constituted by the government and make report/recommendations for issuance of 'Essentiality Certificate' in the form of Government Order. It is only after such 'Essentiality Certificate' being granted by the State Government, the management of the institutions has to apply for recognition to the Andhra Pradesh Para Medical Board in the prescribed format along with a copy of the Government Order by paying the prescribed fee. Thereafter, the Board will constitute District Level Teams for inspection of the institutions for various courses permitted by the government. The Board will thereafter issue 'Certificate of Recognition' with five-year validity, based on the District Level Committee's report. It is further asserted in the counter that all the institutions, which have been permitted by the government by issuing 'Essentiality Certificate', only will be included in the notification and as a matter of fact, an opportunity was also given to all the institutions by issuing a general notification and verification process was conducted. In those circumstances, it is submitted that the Writ Petitions are liable to be dismissed.

Heard Sri Vedula Venkata Ramana, learned Senior Counsel, Sri Chittem Venkata Reddy, Sri Kasa Jaganmohan Reddy, learned counsel on behalf of the petitioner institutions, learned Advocate General (Andhra Pradesh) on behalf of the 1st respondent State.

Sri Kasa Jaganmohan Reddy, learned counsel, by drawing attention to Section 20-A of the 1982 Act, would submit that while Section 20-A prohibits any individual from establishing a private institution, Section 24 of Act 38 of 2006 does not contain such restriction and the same itself is an indication that the provisions of the Andhra Pradesh Education Act, 1982 do not govern the paramedical

institutions and the courses offered by them, at least after Act 38 of 2006 coming into force.

The argument of Sri Jaganmohan Reddy need not be dealt with, at this stage, as there is no factual data before this Court with respect to the institutions, which have been permitted in violation of Section 20-A of the 1982 Act and at any rate, the case on hand, can be disposed of even without adverting to the said contention, leaving the question open.

The fundamental question, which is required to be decided, is ***‘whether granting of permission by the Para Medical Board for establishing the institutions for offering para-medical courses without there being sanction/permission /essentiality certificate from the government under Section 20 of the A.P. Education Act, 1982, is legal and valid.***

There is no dispute that the writ petitioner institutions have all been permitted by the Para Medical Board constituted under Section 3 of the A.P. Para Medical Board Act, 2006 (Act 38 of 2006). After the Para Medical Board came into force, certain new courses have been permitted by the Board and in certain other cases, permissions were also granted for shifting the institutions. It is also not in dispute and rather, it is an admitted fact that, for all purposes, it is the Para Medical Board, which has been overseeing the procedural aspects with respect to the para medical institutions.

To answer the above question, the scope and ambit of the Andhra Pradesh Education Act, 1982 in comparison with the Andhra Pradesh Para Medical Board Act, 2006 is required to be examined. For better and easy understanding, the relevant provisions and rules are tabulated in a comparative statement, as under:

A.P. Paramedical Board Act (Act 38 of 2006) (Sections quoted so far as relevant)	The A.P. Education Act – 1982 (Sections quoted so far as relevant)
Section 3: The Government may, by notification, constitute a body to be	5. Constitution of Boards: - (1) The Government may, by notification,

known as 'the Andhra Pradesh Para Medical Board' to exercise the powers conferred on and to perform the functions assigned to it under the Act.	establish a board of secondary education to be called "the Board of Secondary Education, Andhra Pradesh", the composition and powers of which shall be such as may be prescribed. The functions of the Board shall be to advise the Government on the co-ordinated development of secondary education in the State, including the conduct of examinations, conforming to the minimum standards as may be prescribed and the award of certificates. (2) The Government may, by notification, establish a board of teachers' education to be called "the Board of Teachers' Education, Andhra Pradesh" the composition and powers of which shall be such as may be prescribed. The functions of the Board shall be to advise the Government on the courses of study, pre-service and in service training of teachers and other matters relating to teachers' education.
<u>Section 4: Composition of the Board:</u> The Board shall consist of the following members namely: (I) Ex-officio Members (i) The Principal Secretary to Government in H.M. & F.W. Department shall be the ex-officio President of the Board; (ii) The Principal Secretary to Government in Finance Department or an officer not below the rank of Deputy Secretary to Government nominated by the Principal Secretary shall be member; (iii) Vice-Chancellor, Dr.N.T.R. University of Health Sciences, Vijayawada shall be the Vice-President of the Board; (iv) The Director of Medical Education, Andhra Pradesh Hyderabad shall be the Member – Convener of the Board; (v) The Director of Health, Andhra Pradesh, Hyderabad – Member; (vi) Commissioner, Andhra Pradesh Vaidya Vidhana Parishad, Hyderabad – Member; (vii) The Secretary to the Board shall be Member – Secretary of the Board. (II) Nominated Members.	3. Director and other officers: - (1) The Government may appoint for the State one or more Directors for general education and a Director of Technical Education, for the purpose of exercising the powers conferred on and performing the functions entrusted to each of them by or under this Act. (2) The Government may also appoint such number of Additional Directors, Joint Directors, Deputy Directors, Assistant Directors and such other officers as they think fit to assist each such Director in the exercise of the powers conferred on and the performance of the functions entrusted to him by or under this Act. (3) Subject to the provisions of this Act, and the general or special orders of the Government made in this behalf, - (a) the Director shall be the chief controlling authority in all matters connected with the administration of such part of general education in the State as may be allotted to him by the Government by an order made in this behalf ; (b) the Director of Technical Education shall be the chief controlling authority in all matters connected with the administration of technical education in the State.
<u>Section 12 – Constitution of Executive Committee:</u> (1) The Board may constitute an Executive Committee and such other Committees from among its members as may be necessary for performing such functions in the manner as may be provided by regulations. (2) The Executive Committee shall consist	4. District Educational Officers and other subordinate officers and staff at the district level: - (1) The Government may appoint for each district one or more District Educational Officers, and every such District Educational Officer shall exercise such powers and perform such functions as may be entrusted to him by or under this Act. (2) The Government may sanction the

of the President and Vice-President, who shall be members ex-officio, and five members chosen by the Board from among themselves one of whom shall be a representative of the Association of Managements. 3) The Executive Committee shall exercise and discharge such powers and duties of the Board as may confer or impose upon it by any regulations, which may be made in this behalf.	appointment of such number of officers and staff as may be necessary to assist the District Educational Officer. (3) The appointment to the posts sanctioned under sub-section (2) shall be made by such authority and in such manner as may be prescribed. (4) The powers and functions of the officers and staff appointed under this section shall be such as may be prescribed.
<u>Section 17 – Powers and functions of the Board:</u> Subject to the provisions of the Act and such conditions as may be prescribed, the Board shall exercise the powers and perform the following duties: (a) to fix the criteria for the establishment of para medical institutions; (b) to recognize para medical institutions; (c) to grant temporary recognition to any institution established before the commencement of this Act; (d) withdrawal of recognition granted to Para Medical Institutions under this Act; (e) to (j)..... (k) – Conduct inspection of para medical institutions: (l) to (x)	Refer Sections 3 to 5 of the Act.
<u>Section 18 (3) Right of Appeal:</u> It shall be competent for the Para Medical Board to cancel the permission or recognition given to institutions if on enquiry found that the Para Medical Institute is not functioning properly and unbecoming of an organization in conduct of that Institute in imparting proper education in para medical courses. Such institution has got a right of <u>appeal to the Government</u> within thirty days from the date of communicating the orders derecognising Institute and the decision of the Government is final.	89. Appeals: - Save as otherwise provided in this Act, - (a) any person aggrieved by an order passed by an officer or authority other than the Director under this Act may, within thirty days from the date of communication of such order, appeal to the Director; (b) any person aggrieved by an order passed by the Director under this Act other than an order passed by him under Clause (a) may, within sixty days from the date of the communication of such order, appeal to the Government. <i>Explanation:</i> - For purposes of this section and Section 92, the expression "Director" includes the Additional Director or Joint Director when he exercises the powers of the Director under this Act.
<u>Section 20 – Registration</u> (1) Every person qualified for registration under sub-section (1) of Section 19 shall apply for registration within three months from the date of commencement of this Act or within such extended time as maybe fixed by the Government, by notification in the Gazette; (2) Every person eligible for registration under sub-section (2) of Section 19 shall apply for registration within three months from the date on which he became eligible for registration as provided for in the said sub-section; (3) An Application for registration under this Act shall be in the prescribed form	No provision

and shall be accompanied by such fee as may be prescribed. (4)..... (5) An Application for registration shall be addressed to the Secretary and if the Secretary is satisfied that the applicant is entitled to have his name entered on the register, he shall enter thereon the name of the applicant and issue him a certificate in such form as may be prescribed. (6) Any person whose application for registration is rejected by the Secretary, may, within three months from the date of such rejection, file an appeal to the Board and the decision of the Board thereon shall be final.	
<u>Section 22 - Removal from the Register:</u> (1) Subject to the provisions of this Section, where the Board is satisfied after giving the person concerned a reasonable opportunity of being heard and after making such further enquiry as it may think fit to make, may order that the name of that person shall be removed from the register.	No provision
<u>Section 24 - Recognition of institutions</u> (1) Subject to the provisions contained in Section 24, no person shall establish a para medial institution or conduct any para medical course for preparing students to acquire any recognized qualification, without the prior recognition by the Board. (2) A person may apply for the recognition of a para medical institution to the Secretary of the Board in such form which shall be accompanied by such fee, as may be prescribed. (3) On receipt of the Application made under sub-section (2), the Secretary to the Board shall conduct such enquiry in such manner as may be prescribed and shall, by order grant recognition or reject the application for recognition in such manner as may be prescribed. (4) the educational and training institutions conforming to the standards fixed by the Board by regulations made under this Act, alone shall be given recognition under this Act. (5) Notwithstanding anything contained in sub-section (1), all institutions conducting para medical courses as on the date of commencement of this Act shall apply for recognition to the Board within three months from the date of commencement of this Act. If the institution applying for recognition does not conform to the standards fixed by the Board in this	<u>Section 20 - Permission for establishment of educational institutions:</u> - (1) The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions. (2) In pursuance of the notification under sub-section (1), any educational agency including local authority or registered body of persons intending to - (a) establish an institution imparting education ; (b) open higher classes in an institution imparting primary education; (c) upgrade any such institution into a high school ; or (d) open new courses (Certificate, Diploma, Degree, Post-Graduate Degree Courses, etc.) may make an application, within such period in such manner and to such authority as may be notified for the grant of permission therefor. (3) Any educational agency applying for permission under sub-section (2) shall, - (a) before the permission is granted, satisfy the authority concerned, - (i) that there is need for providing educational facilities to the people in the locality ;

regard, temporary recognition may be granted to the institution subject to the condition that the facilities in accordance with the standards fixed by the Board shall be provided within a period of one year from the date of grant of temporary recognition. (6) If the institution does not provide the facilities in accordance with the standards fixed by the Board, within the period specified therein, the temporary recognition granted under sub-section (5) shall be withdrawn forthwith.	(ii) that there is adequate financial provision for continued and efficient maintenance of the institution as prescribed by the competent authority ; (iii) that the institution is proposed to be located in sanitary and healthy surroundings ; (b) enclose to the application, - (i) title deeds relating to the site for building, playground and garden proposed to be provided ; (ii) plans approved by the local authority concerned which shall conform to the rules prescribed therefor ; and (iii) documents evidencing availability of the finances needed for constructing the proposed buildings ; and (c) within the period specified by the authority concerned in the order granting permission, - (i) appoint teaching staff qualified according to the rules made by the Government in this behalf ; (ii) satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission. (4) On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987, no educational institution shall be established except in accordance with the provisions of this Act and any person who contravenes the provisions of this section or who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may extend to three years and with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees : Provided further that the Court convicting a person under this section shall also order the closure of the institution with respect to which the offence is committed.] [20A. Prohibition of individual to establish institutions: - On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987 no individual shall establish a private institution: Provided that this section shall not have any effect on any private institution established by an individual and recognised by the competent authority prior to such commencement]. 33B. Permission for establishment of registered schools: - (1) The competent authority shall, from time to time,
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	conduct a survey as to identify the need for establishing registered schools under its jurisdiction and then notify in the prescribed manner through the local news papers calling for applications from the educational agencies desirous of establishing the school to be registered in the manner hereinafter provided. (2) In pursuance of the notification under sub-section (1), any registered body of persons intending to, - (a) establish a registered school ; (b) open higher classes in a registered school imparting pre-primary or primary education ; or (c) upgrade any such school into a high school, may make an application, within such period, in such manner and to such authority as may be notified for the grant of permission therefor. (3) The authority empowered to grant permission under sub-section (2) may, after satisfying that the conditions prescribed for the grant of permission are fulfilled, grant the permission and register the school in such manner as may be prescribed or refuse such permission after giving reasons therefor and where the school is so registered, a certificate to that effect may be issued in the name of the school. 33C. Special provision in respect of existing schools: - (1) The management of every private institution existing on the date of commencement of the Andhra Pradesh Educational (Amendment) Act, 1987 desirous of registering the school in accordance with the provisions of this Chapter may make an application for registration in accordance with the provisions of Section 33B to the competent authority within sixty days from such commencement and if no application is made within the said period or where the application is rejected, the institution shall continue to be a private institution.
Section 25 – Withdrawal of recognition: Where, on the basis of a report of a Committee appointed by the Board in this behalf, it is satisfied that an institution recognised under this Act – (a) has failed to comply with conditions of recognition; or (b) there exists any of the grounds which would have entitled to refuse the application for recognition the Board, may by order withdraw such recognition, provided that, before such withdrawal of recognition, the Board shall give an opportunity to the person managing that institution for making his representation.	21. Grant or withdrawal of recognition of institutions imparting education: - (1) The competent authority may, by order in writing grant, recognition in respect of any institution imparting education or for a higher class in any such institution, permitted to be established under Section 20 subject to such conditions as maybe prescribed in regard to accommodation equipment, appointment of teaching staff, syllabi, text books and other matters relating thereto : Provided that in case of existing institutions under all managements the deficiencies, if any, in respect of the above conditions shall be made good within the time specified therefor in the order

	granting recognition. (2) Where the manager of any local authority educational institution or private educational institution, - (a) fails to fulfil all or any of the conditions of recognition, or fails to comply with the orders of the competent authority in regard to accommodation, equipment, syllabi, text books, appointment, punishment and dismissal of teachers ; (b) denies admission to any citizen on grounds only of religion, race, caste, language or any of them ; (c) directly or indirectly, encourages in the educational institution any propaganda or practice wounding the religious feelings of any class of citizens of India or insulting the religion or the religious beliefs of that class ; (d) employs or continues to employ any teacher whose certificate has been cancelled or suspended by the competent authority after due enquiry or who has been considered, by the competent authority after due enquiry to be unfit or undesirable to be a teacher ; or arbitrarily removes a teacher or fails to comply with the orders of the competent authority in this regard ; (e) fails to remedy the defects in the instructions or accommodation or the deficiencies in the management or discipline within such time as may be specified therefor by the competent authority; (f) contravenes any of the provisions of this Act and the rules and orders made thereunder ; the competent authority may, for reasons to be recorded in writing withdraw the recognition of the institution or take such other action as is deemed necessary after giving to the manager an opportunity of making representation against such withdrawal or action. (3) Where the Government are of opinion that the recognition granted to any local authority educational institution or private educational institution should, in the public interest, be withdrawn, they may, after giving one month's notice to the manager of such institution to make any representation, withdraw, by notification, the recognition granted to the said institution. (4) Notwithstanding anything in any other law for the time being in force, no educational institution which has not been recognised or the recognition of which has been withdrawn under this Act shall be entitled, - (a) to receive any grant-in-aid from the State funds or other financial assistance from the Government ;
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	(b) to send up candidates for examinations in courses of study conducted under this Act. [21A. Prohibition of affiliation with Universities outside the State: - (1) No institution imparting education and located in this State shall affiliate itself to any University outside the State of Andhra Pradesh. (2) Whoever contravenes the provisions of sub-section (1) shall be punished with simple imprisonment for a term which shall not be less than six months but which may extend to three years or with fine which shall not be less than three thousand rupees but which may extend to fifty thousand rupees or with both.] 33D. Cancellation of registration of the registered schools: - Where the competent authority is of the opinion that the management of a registered school has failed to fulfil all or any of the conditions of registration under Section 33-B or the rules made thereunder, it may after giving a notice not less than thirty days to the manager of such school cancel the registration of the school and the certificate granted under Section 33B.
Section 26 – Recognition of qualifications (1) The Board on representation or otherwise may recognize any Degree, Diploma or Certificate awarded by any University, Board or Institution established under any law for the time being in force to be recognised qualification for the purposes of this Act. (2) Where a qualification is recognized under sub-section (1), the Government shall, by notification in the gazette, declare the same as equivalent qualification for the purposes of this Act.	No provision
Section 27 – Inspection of institutions (1) The Board may appoint either on regular or <i>ad-hoc</i> basis such number of officers as it may deem necessary, to inspect any institution for the purposes of granting recognition under this Act. (2) The officers referred to in sub-section (1) shall also be empowered to conduct periodical inspections of the recognised institutions to ensure that the required standards are being maintained by them. (3) The Secretary or any officer authorised by the Board may enter into the premises of any recognised institutions to make any inquiry or inspection which is authorised by the provisions of this Act or of any rule or regulation or order made thereunder. (4) The Manager and employees of a recognized institution and its employees shall be bound to offer to the officers of	31. Inspection of educational institutions: - (1) The Government or the competent authority may authorise any officer not below such rank as may be prescribed to inspect any educational institution in the State. (2) The officer authorised under sub-section (1) shall exercise general powers of inspection over the working of the educational institution. (3) The manager and the employees of the educational institution shall at all reasonable times be bound to afford to the aforesaid officer all such assistance and facilities as maybe required for the purpose of such inspection. (4) The manager shall comply with such directions or suggestions as may be given by the competent authority on the report of the aforesaid officer: Provided that the manager aggrieved by

the Board such access at all reasonable times, to the premises of such institution and to all documents and materials as may in the opinion of such officers be necessary to enable them to discharge their duties under this section.	any such direction or suggestion may appeal, within thirty days from the date of receipt of such direction or suggestion to the prescribed authority whose decision on such appeal shall be final. ** NO REULES AND NO PROCEDURE
<u>Section 30 – Persons not registered under this Act not to practice.</u> (1) No person other than a person registered under this Act shall practice as a Medical Laboratory Technician, Ophthalmic Assistant, ECG Technician, EEG Technician, EMG Technician, Radiographic Technician or such other Technicians declared by the Government as Para Medical Technicians from time to time. (2) Any person who acts in contravention of this section shall on conviction be punishable – (a) and (b)	No provision
<u>Section 31 – Offences by Hospitals, Institutions etc.,</u> (1) No dispensary, hospital, infirmary, Lying-in-Hospital, sanatorium, operation theatre, nursing home, blood bank, medical laboratory or other similar institution shall employ any person as a Para Medical Technician unless such person is a Para Medical Technician registered under this Act. (2) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees.	No provision
<u>Section 44: Power to make rules:</u> The Government may by notification in the Gazette, make rules to carry out all or any of the purposes of this Act, not inconsistent with any of the provisions contained therein.	<u>99. Power of Government to make rules:</u> - (1)(a) The Government may by notification [x x x] make rules to carry out all or any of the purposes of this Act. (b) In particular and without prejudice to the generality of the foregoing power, such rules may provide for, - (i) [x x x] (ii) the steps to be taken for providing necessary facilities for imparting compulsory primary education before notifying any area to be specified area ; (iii) the manner in which lists of children shall be prepared by the attendance authority in any specified area ; (iv) the distance beyond which a child cannot be compelled to attend an approved school ; (v) the manner in which in any enquiry under this Act shall be held; (vi) the form in which an attendance order under this Act shall be passed ; (vii) the registers, statements, reports, returns, budgets and other information to be maintained or furnished by approved schools for the purposes of this Act ;

	(viii) the declaration as to what constitutes secondary or higher secondary education, professional education, technical education, special education, school places, school-age and attendance, in schools or other institutions ; (ix) the registers, statements, reports, returns, accounts and budgets and other information to be maintained or furnished by the local authorities in respect of education funds ; (x) the procedure for the assessment and realisation of the taxes leviable under this Act ; (xi) the establishment or maintenance and administration of educational institutions; (xii) the grant of recognition to educational institutions and the conditions therefor ; (xiii) regulating the rates of fees, the levy and collection of fees in educational institutions ; (xiv) the manner in which accounts, registers, records and other documents shall be maintained in the educational institutions and the authority responsible for such maintenance ; (xv) the submission of returns, statements, reports and accounts by managers or owners of properties of educational or tutorial institutions ; (xvi) the inspection of educational and tutorial institutions and the officers by whom inspection shall be made ; (xvii) the mode of keeping and the auditing of accounts of such institutions ; (xviii) the standards of education and courses of study in educational institutions ; (xix) the grant of sums by the Government to educational institutions towards providing scholarships, bursaries, fee concessions and the like ; (xx) the preparation and submission of development plans for educational institutions in general and for technical education and the contents of such plans ; (xxi) the powers and the functions of the officers and other subordinate staff of the Education Department ; (xxii) the preparation and sanction of building plans and estimates of the educational institutions and the requirements to be fulfilled by the buildings for the educational institutions maintained by the local authorities and private institutions; (xxiii) the purposes for which the premises of the educational institutions may be used and the restrictions and conditions subject to which such premises may be used for any other purpose ; (xxiv) the regulation of the use of text
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	books, maps, plans, instruments and other laboratory and sports equipment in the institutions; (xxv) the regulation for admission into educational institutions of pupils for the academic course, private study and other special courses and the attendance thereat ; (xxvi) the qualifications necessary and other conditions to be fulfilled for appearing at the examinations conducted by the authorities under this Act and the method of valuation or revaluation of answer scripts ; (xxvii) the opening of special night schools and the conditions for their working and of parallel sections or classes in the institutions for linguistic minorities ; (xxviii) the manner of conducting the class and terminal examinations and promotion of pupils to higher classes ; (xxix) the conditions subject to which donations or contributions from the public maybe accepted by the educational institutions and the naming of institutions ; (xxx) the conditions for co-education in the educational institutions and the regulation of the conduct and discipline of the pupils and the penalty for misconduct or indiscipline ; (xxxi) the manner of service of notices, orders and other proceedings, of presenting appeals or applications for revision or review and the procedure for dealing with them and the fee in respect thereof ; (xxxii) the scale of fees or charges or the manner of fixing fees or charges payable in respect of any certificate, permission, marks list or other document for which such fees may be collected; (xxxiii) the constitution of educational councils at the Panchayat Samithi and Zilla Parishad and the State level ; their composition and function ; (xxxiv) all matters expressly required or allowed by this Act to be prescribed or in respect of which this Act makes no provision or makes insufficient provision and a provision is, in the opinion of the Government, necessary for the proper implementation of this Act. (2) Any rule may be made under this Act with retrospective effect and when such a rule is made the reasons for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature. (3) Every notification issued and every rule made under this Act, shall immediately after it is issued or made, be laid before each House of the State Legislature if it is in session and if it is
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	not in session in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the notification or in the rule, or in the annulment of the notification or the rule, the notification or the rule shall, from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.
RULES	
ANDHRA PRADESH PARA MEDICAL BOARD RULES, 2006 (issued in G.O.Ms.No. 128, Health, Medical and Family Welfare (K2) Department, dated 25.04.1997, in exercise of the powers conferred by Section 44 of the Andhra Pradesh Para Medial Board Act, 2006)	ANDHRA PRADESH PRIVATE PARA MEDICAL TRAINING INSTITUTIONS (GRANT OF PERMISSION AND REGULATION OF ADMISSIONS INTO PRIVATE INSTITUTIONS) RULES, 1997 (issued in G.O.Ms.No. 304, Health, medical & Family Welfare (K2) Department, dated 07.08.1997, in exercise of the powers conferred by Section 99 of the Andhra Pradesh Education Act, 1982)
Rule 4: Method of Appointment of Secretary: Government shall appoint an officer or retired officer not below the rank of Joint Secretary to Government as Secretary of the Board.	No provision
Rule 11: Eligibility for Registration: Any person, who possesses the recognized qualification, as defined in the Act, shall be eligible for Registration of his/her name under the provisions of the Act.	No provision
Rule 12: Registration: Any person seeking registration under Section 20 of the Act shall apply to the Secretary of the Board in the prescribed Form I, furnishing full particulars, annexing the original degree / diploma / certificate along with a Photostat copy and fees prescribed in Rule 8 within three months from the date of obtaining certificate Every applicant whose name has been entered in the Register shall be entitled to receive a Certificate of Registration from the Secretary and the Secretary may also reject the grant of registration by recording the reasons therefor. Appeal provision is also provided for.	Rule 10: Application for Essentiality Certificate: The University of Health Sciences (UHS) shall prepare an appropriate proforma for application form for issue of the Essentiality Certificate and the price of the application form shall be fixed by the Government from time to time. For the present, Rs. 5,000/- is fixed as fee for obtaining an application form. There shall also be an inspection fee of Rs.5,000/- for organizing an inspection by the UHS, which is revisable by the Government from time to time. The applications duly filled-in shall be submitted to the UHS, which after scrutinizing all the applications, shall forward them to the Committee constituted for examination and consideration of the applications in G.O.Ms.No. 267, HM & FW(E1)

	Department, dated 14th July 1997. The Committee constituted for consideration of the applications for establishing private para medical institutions in G.O.Ms.No. 267, HM & FW(E1) Department, dated 14th July 1997 under the Chairmanship of Justice V. Ramachandra Raju (Retried Judge) shall examine the applications as so received and make appropriate recommendations. The Government thereafter will issue the Essentiality Certificate to only such applicant institutions which are recommended by the Committee.
Rule 13: Renewal of Registration: The holder of the Certificate of Registration shall submit an Application to the Secretary in prescribed Form-VI to renew his / her registration at least three months before the expiry of the period of validity of certificate.	No provision
Rule.16: Institution not recognized under the Act shall not establish institution: No person shall establish a Para Medical Educational Training Institution or conduct any paramedical course for preparing students to acquire any recognized qualification without prior recognition of the Board.	No provision
Rule 17: Recognition of Para Medical Educational and Training Institutions: A person or an existing institution offering training and preparing students to acquire any qualification in paramedical courses shall submit the Application in the prescribed Form-XIII to the Secretary of the Board for recognition of the institution along with the fee prescribed in Rule 8. As soon as an Application is received from the existing institution, a temporary certificate of recognition prescribed in Form-XV shall be issued by the Secretary within 15 days, subject to condition that the facilities in accordance with the standards fixed by the Board shall be provided within a period of one year from that date. On receipt of an Application from a new institute for recognition, the Secretary of the Board shall conduct an enquiry / inspection of the institution within a period of three months by an inspection team of the Board and the inspecting team so appointed shall submit a report with reference to the availability of minimum standards prescribed and also detailing the specific deficiencies to be corrected, if any.	Rule 12 – Recognition of the Institutions: Institutions for Diploma or, for the Certificate courses which obtain the Essentiality Certificate and also satisfy the requirements as specified by Justice Ramachandra Raju Committee and obtain its approval shall be deemed to be recognized by the State Government; and the Diploma or, as the case may be the Certificates awarded by them shall be considered valid unless the inspection team appointed by Health Department finds its performance is far below the standards; and recommends to the State Government to de-recognize the institution. B.Sc. Medical Lab Technology Institutions which obtain Essentiality courses according to the rules of affiliation of the University of Health Sciences.
Rule 18 – Certificate of Recognition: Based on the inspection reports, the	No provision

Secretary shall grant the applicant institution a Certificate of Recognition in the prescribed form. In the event of any change of ownership, management or name of the institution, the Secretary shall be intimated before such change with necessary documents.	
Rule 19: Withdrawal of Recognition: The Secretary on receipt of reliable information that the recognized institution has been guilty of any misconduct or on a written complaint that institution is violating any of the terms and conditions of the recognition, after making enquiries thereto shall place a report before the Board, which shall appoint an enquiry committee to enquire into the matter and submit a report. On receipt of the report from the Enquiry Committee, the Board is competent to pass an order under Section 25 of the Act withdrawing the recognition of the institution.	Rule 14: Applicability to the Existing Institutions: These Rules shall apply mutates-mutandis to the existing institutions at the commencement of these rules. The existing institutions, if found not fulfilled certain terms and conditions stipulated in these rules, shall fulfil such terms and conditions within a period of one year from the date of issue of these rules.
Rule 20: Inspection of the Institutions: The Board shall appoint inspecting officers under Section 27 of the Act.	No provision

A close scrutiny of the comparative statement does not leave any doubt in the mind of the Court that Act 38 of 2006 and the Rules made thereunder has completely occupied the field in relation to establishment of para medical institutions, courses to be offered by them, the method and manner of award of degree /diplomas in para medical courses, recognition of technicians, etcetera. The same obviously have been made, after consultation with the Committee comprising the policy-makers, administrators and others, who include the academicians. The detailed qualifications required for a person to be a Member of the Board have also been clearly set out in Section 3 of Chapter II of the Act, unlike in the case under the Rules notified in G.O.Ms.No. 304. In other words, it can safely be said that the Legislature, in its wisdom, had chosen to make a special enactment exclusively to deal with the matters relating to para medical courses, in deviation from the general enactment i.e. Andhra Pradesh Education Act, 1982 governing the field of education. Hence, undoubtedly, it can be said that the Andhra Pradesh Para Medical Board Act, 2006 and

the Rules framed thereunder is much more elaborate covering the entire field relating to establishment of para medical institutions and the courses to be offered by them. It is not in dispute that after enactment of the 2006 Act, it is only the Para Medical Board which has been carrying out all the functions in relation to the institutions and the courses to be offered by them.

It may be noted that under G.O.Ms. No. 304, dated 07.08.1997, the University of Health Sciences was required to prepare a proforma for Application form and the same, after scrutiny, to be forwarded to the Committee constituted for its examination and consideration in G.O.Ms. No. 267, dated 14.07.1997 under the Chairmanship of Justice Ramachandra Raju, a Retired Judge. Justice Ramachandra Raju's Committee was required to verify various aspects with respect to availability of infrastructural facilities, in terms of Rule 8 and make recommendation to the government, which, in turn, is required to issue an 'Essentiality Certificate'. By G.O.Ms. No. 318, dated 29.09.2000, Justice Gogineni Radha Krishna Rao, Retired Judge, was appointed as Chairman and thereafter in 2005, by G.O.Ms.No. 58, dated 09.03.2005, Justice I. Pandu Ranga Rao (Retired Judge) was appointed as the Chairman. It may also be noted that after 2006, there was no High Power Committee. Even as per G.O.Ms. No. 304, the functions entrusted to the Committee is only to make recommendations to the government with respect to the institutions and ultimately, it is the government which would consider granting 'Essentiality Certificate'. In other words, the government represented by the Principal Secretary concerned, for all practical purposes, is responsible for undertaking the entire exercise under G.O.Ms.No. 304. Even under Section 4 of the 2006 Act, the Para Medical Board is headed by the Principal Secretary (Education) with other Committee members constituted as prescribed. In other words, the

interests and concerns of the government also stand adequately considered by the Secretary.

While on this aspect, the stand taken by the Para Medical Board in the counter-affidavit is to be noted. The stand of the Para Medical Board *dehors* the provisions under which they have been constituted and the powers vested in them. They assert that the Essentiality Certificate has to be issued by the government, while in the counter-affidavit filed by the Board, it has taken the stand of the government. If the stand of the Board is that an Essentiality Certificate issued under Section 20 of the 1982 Act is a prerequisite, there is no explanation why and in what circumstances, a large number of institutions were permitted to be established and the courses were permitted to be offered. Further, in the light of the legal position, the stand of the Para Medical Board appears to be abdicating its responsibility in denying to itself the powers vested under the Act merely to support the stand of the government.

In this context, the argument of the learned Advocate General that the power to identify the needs of the locality, the courses to be offered by the institutions, commonly termed as 'Determination of Essentiality by issuance of Essentiality Certificate' is within the exclusive domain of the government, though, at first blush, appears to be attractive, one cannot lose sight of all encompassing sweep of Act 38 of 2006, so far as establishment of the para medical institutions and recognition of the para medical courses therein. It may be borne in mind that both the A.P. Education Act, 1982 and the Para Medical Board Act, 2006 are traceable to the legislative powers of the State in Entry 25 of List III of the Constitution, concurrent list, and in that sense, it cannot be said that the State lacked the legislative competence to enact Act 38 of 2006 and fortunately, in the present case, it is not even the case of the State.

In the present factual and legal background, it is apt to refer to the judgment of the Constitution Bench of the Supreme Court in ***Belsund Sugar Co. Ltd. v. State of Bihar***¹. It has been observed therein that it is not uncommon for a special enactment taking over and having precedence over a general enactment occupying the field earlier. In the said case, the Supreme Court, after elaborate comparison of the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 Sugarcane (Control) Order, 1966 and Bihar Agricultural Produce Markets Act, 1960, had held, in para 49, as under:

“It must, therefore, be held that the entire machinery of the Market Act cannot apply to the transactions of purchase of sugarcane by the appellant Sugar Factories as they are fully covered by the special provisions of the Sugarcane Act. It is also necessary to note that if both these Acts are treated to be simultaneously applying to cover sale and purchase of sugarcane, the possibility of a clear conflict of decisions of officers and authorities acting under the Sugarcane Act on the one hand and the Market Act on the other would arise. These authorities acting under both the State Acts, dealing with the same subject matter and covering the same transactions may come to independent diverse conclusions and none of them being subordinate to the other may create a situation wherein there may be a head-on collision between the decisions and the orders of these authorities acting on their own in the hierarchy of the respective statutory provisions. For example, the Marketing Inspector may find that weighment of sugarcane was not proper at a given point of time, while the Cane Officer may find to the contrary. In the hierarchy of proceedings under the Market Act the Market Committee may take one decision with respect to the same subject-matter, for which the Collector exercising appellate powers under the Sugarcane Act may take a contrary decision. This would create an irreconcilable conflict of decisions with consequential confusion. So far as the buyers and sellers of “agricultural produce – sugarcane” are concerned, it is of no avail to contend as submitted by learned counsel for the respondents that for avoiding such conflicts, Section 15 is dispensed with by the State in exercise of its power granted by the State under Section 42 or not is not a relevant consideration for deciding the moot question whether the statutory scheme of the Market Act can harmoniously coexist with the statutory scheme of the Sugarcane Act as enacted by the very same legislature. It is possible to visualise that the State authorities may not exercise powers under Section 42 of the Act. In such an eventuality, the Sugarcane Act would not countenance a public auction of sugarcane to be supplied by the cane-

¹ (1999) 9 Supreme Court Cases 620

grower to the earmarked factory for which sugarcane is grown in the reserved area. On the other hand, the Market Act would require the very same sugarcane to be brought to the market yard for being sold at the public auction to the highest bidder who may not be the sugar factory itself. Thus what is reserved for the sugar factory by way of raw material by the Sugarcane Act would get dereserved by the sweep of Section 15 of the Market Act. To avoid such a head-on conflict, it has to be held that the Market Act is a general Act covering all types of agricultural produce listed in the Schedule to the Act, but out of the listed items if any of the “agricultural produce” like sugarcane is made the subject-matter of a special enactment laying down an independent exclusive machinery for regulating sale, purchase and storage of such a commodity under a special Act, then the special Act would prevail over the general Act for that commodity and by necessary implication will take the said commodity out of the sweep of the general Act. Therefore, learned counsel for the appellants are right when they submit that because of the Sugarcane Act the regulation of sale and purchase of sugarcane has to be carried out exclusively under the Sugarcane Act and the said transactions would be out of the general sweep of the Market Act. None of its machinery would be available to regulate these transactions.”

Apart from the above-quoted portions, in previous as well as subsequent paragraphs, the Supreme Court, though not said in many words, had, ultimately, applied the principle under latin maxim *generalia specialibus non derogant*. The reasoning adopted by the Supreme Court would equally apply in the present case as well, leaving no manner of doubt that the State Legislature itself had consciously carved out so far as the education in paramedical institutions and courses to be governed by Act 38 of 2006 is concerned.

To a specific query from the Court, the learned Advocate General has furnished the information that the government has not issued any orders nor made any study or analysis with respect to requirements of paramedical instructions/courses after Act 38 of 2006 coming into force. In fact, it was presumed by the government that the A.P. Para Medical Board is to maintain/monitor/administer all the institutions/relevant records of the Government orders and requirement/recommend the institutions/courses to the Government from time to time. As on the

date of Act 38 of 2006 coming into force, in the composite State, 350 institutions were in existence and the government had issued 216 G.Os., wherein 18 courses were being offered with a total 8685 seats. Out of 350, 256 institutions are in the State of Andhra Pradesh and 161 G.Os. in relation to the State of Andhra Pradesh were issued by the government. As of date, 532 institutions offering 18 courses with a combined capacity of 48,406 and out of the same, 191 institutions were permitted by the government and 341 institutions were permitted by the Secretary of the Board.

In view of the above discussion, it is to be concluded that the A.P. Para Medical Board Act, 2006 and the Rules framed thereunder govern the field relating to establishment and recognition of para medial institutions and the courses to be offered by them, and there is no necessity for the petitioners to obtain Essentiality Certificate from the 1st respondent government.

In the light of the conclusion arrived at by this Court, the cases which have come up before this Court are required to be considered, keeping in view the grievance of the petitioners in individual cases i.e. 1) cases where the institutions were shifted to new location; 2) additional courses to be offered by the institutions, for which permission has not been granted on the ground of government not granting 'Essentiality Certificate' under Section 20 of the Act, and 3) providing new courses and enhancement of seats. With respect to all the above issues, as long as the permission is granted by the Para Medical Board, duly constituted under the Act, the respective institutions cannot be denied their right to run the institutions for the approved courses offered. However, considering the vague contention raised in the counter-affidavit, coupled with UO Note No. 13501/G2/2014, dated 25.06.2016 that the then Secretary of A.P. Para Medical Board Sri B.N.S.Kumar had issued

permissions to various paramedical courses indiscriminately without there being proceedings of a duly-constituted Board, the respondent shall be at liberty to inquire into and if they find that in any of the cases, as a matter of fact, such permissions were not granted by the Board, they shall be entitled to take action. The respondent authorities, instead of pedantically insisting for a technical sanction from the government, may well ensure strict adherence of the required infrastructure, faculty and the course content so as to bring out best possible qualified para medical technicians, who would be useful to the society. To ensure the same, the Para Medical Board may utilize the statutory powers vested in them for rigorous compliance with the requirements of all the existing institutions before further granting permission to the new institutions.

In the light of the answer to the question raised that the Para Medical Board is competent in all respects to grant approval for establishment of institutions and also authorise offering of new courses, the Writ Petitions are liable to be allowed. Accordingly, there shall be a direction to the respondents to allow the petitioner institutions for the purpose of admission of students into para medical courses and allow them to offer the courses, which, ultimately, lead to grant of approved certificates.

Consequently, the proceedings dated 16.08.2016 of the 2nd respondent withdrawing the Certificate of Recognition is set aside.

Further, considering the fact that on account of pendency of the Writ Petitions, some of the eligible institutions could not make admissions for the academic year 2017-18 and considering the fact that, no interim orders were passed, in fairness, the said institutions shall be given an opportunity to make admissions, for which purpose, the respondents shall consider issuing notification in terms of the Rules and such exercise shall be completed within 15 days from today. It is

clarified that the respondents shall be at liberty to take action with respect to the institutions, which have not complied with the formalities like obtaining registration/permissions, as required in terms of Sections 17 and 24, as may be applicable.

The Writ Petitions are accordingly, allowed. No costs.

(CHALLA KODANDA RAM)

Date: 05.10.2017

ksld/ssv



