

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on 17.01.2020****Judgment Delivered on 04.02.2020****Writ Petition No. 930 of 2001**

- The Indian Medical Association, Chhattisgarh State Branch, through – its Chairman, Legal Cell Dr. G.B. Singh, aged about 59 years, son of Shri S. Mahendra Singh, resident of Juni Lines, Bilaspur, District Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through Secretary, Department of Health, Mantralay, Shastri Chowk, Raipur.
2. Union of India, Through Secretary, Ministry of Health and Public Welfare, New Delhi.
3. Medical Council of India, Through It's Chairman, Aiwan – E, Galib Marg, Kotla Road, New Delhi

---- Respondents**with****Writ Petition (S) No. 2849 of 2013**

1. C.G. Pradesh Swasthya Karamchari Sangh, Through the Sangathan, Secretary, S.S. Soni, S/o Late Shri Keshbo Soni, aged about 49 years, C/o Near DKS Bhawan, Arjun Nagar, PS Gol Bazar, Raipur, District Raipur (C.G.)
2. Kumari Lata Tomar, D/o Shri Ramswroop Singh Tomar, aged about 26 years, R/o Samudayik Swasthya Kendra Patan, PS Patan, District Durg (C.G.)
3. Smt. Savitri Chandrakar, W/o Shri Toran Chandrakar, aged about 50 years, R/o Mana PS Mana, Raipur, District : Raipur, Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Health & Family Welfare, Capital Complex, New Raipur, PS Rakhi, Raipur, District Raipur (C.G.)
2. Director, Directorate of Health Services, Govt. of Chhattisgarh, Old Nurses Hostel Campus, DKS Premises, PS Gole Bazar, Raipur, District Raipur (C.G.)
3. Chhattisgarh Chikitsa Mandal, Through the Registrar, Old Nurses Hostel Campus, DKS Premises, PS Gole Bazar, Raipur, District : Raipur, Chhattisgarh
4. Union of India, Through the Secretary, Ministry of Health, New Delhi
5. Medical Council of India, Through President, Evan-a-Galib Marg, New Delhi

---- Respondents

with

Writ Petition (PIL) No. 32 of 2012

1. Chhattisgarh Pradesh Shaskiya Chikitsak Association (A registered Society under the Chhattisgarh Society Registration Act 1973) through the President Dr. Gokulchand Sarkar, aged about 50 years, S/o late N.C. Sarkar, Presently posted as Medical Officer at Civil Hospital, Mana, Block Dharsinwa, District Raipur (C.G.)
2. Dr. Vimal Kishor Rai, S/o Shri Ramrekha Rai, aged about 42 years, presently posted as Medical Officer, PHC Beergaon, Block Dharsinwa, District Raipur (C.G.)
3. Dr. Manoj Kumar Barman, S/o Late Shambhunath Barman, aged about 37 years, Presently posted as Medical Officer at PHC Urla Block Dharsinwa, District Raipur (C.G.)
4. Dr. Surendra Sahu, Late T.R. Sahu, aged about 34 years, Presently posted as Medical Officer, PHC Urla, Block Dharsinwa, District Raipur (C.G.)
5. Dr. Ganesh Das, S/o Shri S.N. Das, aged about 50 years, Presently posted as Medical Officer, PHC Boriakala, Block Dharsinwa, District Raipur (C.G.)
6. Dr. Narayan Dev Sahu, S/o Shri Motilal Sahu, aged about 39 years, Presently posted as Medical Officer, PHC Mandhar, Block Dharsinwa, District Raipur (C.G.)
7. Dr. Ajay Dhruw, S/o Shri Shyamlal Dhruw, aged about 49 years, Presently posted as Medical Officer, PHC Bhatagaon, Block Dharsinwa, District Raipur (C.G.)
8. Dr. Manjula Bharti, W/o Shri K. Singh Bharti, aged about 38 years, Presently posted as Medical Officer, PHC Bhatagaon, Block Dharsinwa, District Raipur (C.G.)
9. Dr. Sulabha Ahluwalia, W/o Shri Anurag Ahluwalia, aged about 44 years, presently posted as Medical Officer, PHC Labhandi, Block Dharsinwa, District Raipur (C.G.)
10. Dr. Sanjeev Kumar Meshram, S/o Shri B.P. Meshram, aged about 38 years, Presently posted as Medical Officer, PHC Bhanpuri, Block Dharsinwa, District Raipur (C.G.)
11. Dr. Vijay Kumar Ekka, S/o Shri B. Ekka, aged about 49 years, Presently posted as Medical Officer at PHC Mandhar Block Dharsinwa, District Raipur (C.G.)
12. Dr. Divya Pal, D/o Shri H.L. Pal, aged about 37 years, Presently posted as Medical Officer at PHC Dondekala, Block Dharsinwa, District Raipur (C.G.)
13. Dr. Manju Tirki, W/o Shri Tirki, aged about 44 years, Presently posted as Medical Officer at PHC Labhandi, Block Dharsinwa, District Raipur (C.G.)
14. Dr. Vinit Shrivastava, S/o Shri A.R. Shrivastava, aged about 49 years, presently posted as Medical Officer at PHC Amasivni, Block Dharsinwa, District Raipur (C.G.)

15. Dr. Meena Samuel, W/o Shri Samuel Prakash, aged about 49 years, presently posted as Medical Officer, PHC Bhanpuri, Block Dharsinwa, District Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Health & Family Welfare, DKS Bhawan, Mantralaya, Raipur (C.G.)
2. Director, Directorate of Health Services Government of Chhattisgarh, Raipur (C.G.)
3. Director, Directorate of Medical Education Old Nurses Hostel, DKS Bhawan Premises, Raipur (C.G.)
4. Chhattisgarh Chikitsa Mandal, Through the Registrar Raipur (C.G.)
5. Union of India, through the Secretary, Ministry of Health, New Delhi.
6. Medical Council of India, Evan-a-Galib Marg, New Delhi.
7. Directorate General of Health Services Ministry of Health & Family Welfare Government of India, New Delhi.

---- Respondents

For respective Petitioners	:	Shri Sudeep Johri, Shri Ishhadil Ali, Shri Pranjal Shukla and Shri J.K. Gupta, Advocates.
For Respondent/State	:	Shri Chandresh Shrivastava, Deputy Advocate General.
For Respondent/MCI	:	Shri R.S. Marhas, Advocate.
For Union of India	:	Shri Krishna Gopal Yadav, Standing counsel on behalf of Shr B. Gopa Kumar, Assistant Solicitor General.
For respective Respondents	:	Shri Pankaj Singh and Shri Sunny Agrawal, Advocates.
For Intervenors	:	Shri K. Rohan and Shri Sumit Singh, Advocates.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Justice Sanjay Agrawal, Judge

CAV Order

Per P. R. Ramachandra Menon, Chief Justice

1. The grievance projected in the above three writ petitions is mainly connected to an enactment made by the State by way of Act No.7, *i.e.*, of the Chhattisgarh Chikitsa Mandal Act, 2001 (for short, 'the 2001 Act') providing for commencement of a course in the medical field, conferring a degree on successful completion of 3 years and facilitate the placement as Medical

Practitioner, virtually in place of Regular Doctors; despite the fact that, the field of medical education is covered by Entry No. 66 of the 'List-I' of the Seventh Schedule to the Constitution of India, which comes within the exclusive domain of the Union Government.

2. The first among of the three writ petitions *i.e.* Writ Petition No. 930 of 2001 has been filed by the Indian Medical Association – an Association of Medical Practitioners (Doctors) and some members of the Association, challenging the constitutional validity of the 2001 Act and the subsequent amendments, on various grounds. The main ground/challenge raised against the statute is that the State has no legislative competence. A declaration is also sought for, to the effect that the impugned Act is void, for being repugnant to the Union Legislation, namely, the Indian Medical Council Act, 1956 (for short, 'Act of 1956') by virtue of Article 254 of the Constitution of India. The Petitioners also seek to quash the impugned Act for being violative of the Articles 14 and 21 of the Constitution of India.
3. Writ Petition (PIL) No. 32 of 2012 has been filed by a team of Allopathic Doctors and their Association. The challenge is against Annexure P/1 order dated 21.03.2012 therein, whereby the State had decided to convert 741 seats of 'Medical Officers' into 'Rural Medical Assistant' and to appoint ill-qualified persons to treat patients in allopathy. The main grounds of challenge are mostly similar to the grounds raised in Writ Petition No. 930 of 2012, referring to the legislative incompetence of the State to have enacted the 2001 Act and in turn, against the conversion of the posts, which otherwise could have been filled up only by appointing the qualified persons like the Petitioners therein.
4. Writ Petition (S) No. 2849 of 2013 is filed by an Association of Nurses and other Para Medical Staff, joining hands with two of their members. The challenge is against the Annexure P/1 Rules dated 09.07.2013, providing for regularization

of the recruitment of the Rural Medical Assistants as per Chhattisgarh Rural Medical Assistant Class-III (non-gazetted) Service Recruitment Rules, 2013 (for short, 'Rules of 2013'). The grievance is that there is already a set of Rules (Annexure P/10 dated 06.07.2013) dealing with the all concerned in the Class-III non-gazetted cadre and as such, framing of another set of rules as per Annexure P/1, to cater to the needs of ill-qualified 'Rural Medical Assistants' to act as Doctors and in bringing them over and above the slots of the Petitioners is had, contending that it is not liable to be justified.

5. The grounds of challenge against the rules are virtually similar to those raised in the other two writ petitions, referring to the legislative incompetence of the State to have enacted the 2001 Act and the amendments thereunder which provide for starting of the course stated as passed by the 'Rural Medical Assistants'. It is contended that they have been identified to treat the patients virtually without proper qualification and contrary to the rules, regulations and norms issued by the Indian Medical Council, who alone is the competent body to prescribe the syllabus and approve course in the medical field. For quite long, the above three matters were being posted together. Pleadings have been completed by the parties, by filing returns, rejoinders, additional statements, petition for amendments etc.
6. Reference to the prayers (as amended) raised in Writ Petition No. 930 of 2012 would be appropriate, as given below:

“7.1 The petitioner above named most respectfully prays to Hon'ble Court to call for the entire records, pertaining to the case.

7.2 The petitioner above named most respectfully prays to Hon'ble Court to declare the impugned Act 2001 as ultra vires the legislative competence of the State Legislation.

7.2(a) The petitioner above named most respectfully prays that Annexure P/5 (Amendment Act) being violative of article 246 read with Article 254 of the Constitution be held ultra vires.

7.2(b) The petitioner prays to the Hon'ble Court to declare Annexure P-6A "Amendment Act, 2007" being violative of Article 246 R/w Article 254 of the Constitution of India and also further violative of Articles 14 and 21 of the Constitution of India.

7.3 The petitioner above named most respectfully prays to Hon'ble Court to issue a writ of certiorari for quashing of the impugned Act for being violative of statutory conditions imposed by Indian Medical Council Act, 1956 and further being violative of Articles 14 and 21 of the Constitution.

7.4 The petitioner above named most respectfully prays to the Hon'ble Court to declare the impugned Act void for being repugnant to the Central Legislation viz. Indian Medical Council Act, 1956.

7.5 Any other relief, which may be suitable in the facts and circumstances of the case, may also be allowed."

7. The above writ petition was filed challenging Annexure P/1 Act, published in the Chhattisgarh Gazette dated 18.05.2001 on the grounds mentioned already. Originally, the enactment was sought to provide for the establishment of 'Chikitsa Mandal' in the State, to mould practitioners in modern medicine and surgery education to the requisite extent. Subsequently, as per amendment, the 'object and reasons' have been changed, providing that the Act has been brought into the force for improving the quality and prescribing criteria for '**education in alternative medicine**'. Similarly, the word 'practitioner in modern medicine and surgery' has been substituted by the word '**practitioner in alternative medicine**'. Likewise, for the words 'medicine and surgery', the

amendment Act has substituted the words '**practitioner in alternative medicine**'. The word 'medical diploma' came to be substituted by the word '**practitioner in alternative medicine**'. The amendment brought about as per Annexure P/5 was also sought to be challenged by getting the writ petition amended, stating that it was only an 'eye-wash'.

8. The 3rd Respondent/Medical Council of India has filed an affidavit, virtually in support of the contention raised by the Petitioners and asserting that the State does not have any legislative competence to encroach into the field strictly occupied by the Central Government by virtue of the Entry No. 66 of the 'List-I' of the Seventh Schedule. It is also point out that, by virtue of the powers conferred upon the Indian Medical Council, regulations have been framed in connection with the education in the medial field. Hence, the State Government or any other authority is not competent or empowered to prescribe any 'syllabus' or 'course' which are contrary to and inconsistent with the provisions of the 'regulations' on graduate medical education.
9. The version of the State that power is vested with the State to enact the statute by virtue Entry No. 25 of 'List-III' is also sought to rebutted, pointing out that such power is subject to the provisions of Entry No. 66 of 'List-I' and that Article 254 of the Constitution of India will step in. In the event of any inconsistency between the laws made by the Parliaments and those made by the State, the laws framed by the Central Government will prevail; thus, sustaining the authority of the Indian Medical Council. By virtue of the Act of 1956, the very constitution of the 'Chhattisgarh Chikitsa Mandal' by the State is wrong and unfounded. It is asserted that the purported modern medicine and surgery education by the State would produce half-baked and unqualified medical practitioners, who would be a hazard to the society and detrimental to the public at large.

10. The version of the State is that, the object of the 'Act 2001' is only to impart knowledge on the '**alternative medicine**' in substance and all other subjects being taught are in relation to 'alternative medicines' alone. It is also asserted that no subject which is not related to 'alternative medicine' was being taught and hence the grievance of the Petitioner is imaginary or illusive. It is pointed out that the definition of 'alternative medicine' has been erroneously quoted by the Petitioner to include 'Allopathy', asserting that it does not include Allopathy. The State further submits that, even if there was any repugnance with the Central Act, it has been cured by virtue of the amendments already brought about and hence it does not violate any provisions of the Central Act. The impugned Act operates in a different field which is not occupied by any other Central Act and no provision in the Constitution of India is infringed. Reliance is sought to be placed on the verdict passed by the Apex Court in ***Subhashis Bakshi & Others vs. West Bengal Medial Council & Others*** reported in **2003 AIR SCW 934** and some other judgments as well. According to the State, the directive principles of the State policy mandates that the State shall provide medical and health facilities to the persons residing in the State. By virtue of the topographical peculiarities in the State, with remote hilly areas, the dominant population belongs to SC, ST and OBC segment. The inadequacy of qualified Doctors to serve in the rural hilly areas made it obligatory to provide supporting staff with some elementary knowledge in the field and hence the enactment. The course was being conducted through six different institutions and the degrees were recognized by the Pandit Ravi Shankar University, Raipur and the Guru Ghasidas University, Bilaspur.
11. It is pointed out with reference to materials on record, that the course of this type was introduced to inculcate medical knowledge, skills, attitude and social commitment in the students. Since the challenge raised by the Petitioner earlier was in respect of the Ordinance, and since the Ordinance has given way to the

'Act', the Act itself has been sought to be challenged by filing subsequent amendment in the year 2005. It is pointed out that, as per the State Gazette notification dated 07.02.2007 (Annexure A) amendment was made in the regulation, so as to prescribe the minimum standards and as per the gazette notification dated 23.08.2007 it has been renamed as '**Practitioner in Modern and Holistic Medicine**', as borne by Annexure B.

12. In the course of hearing, it was brought to the notice of this Court by the State that the course commenced pursuant to the Act under challenge was discontinued from 2008 and no such course is being continued in any of the institutions. It is also point out that the students who got admission and pursued their studies have successfully completed the course. Pursuant to their selection and appointment to the posts of 'Rural Medical Assistant', they have been continuing in service and their recruitment had to be regularized. It was accordingly, that necessary proceedings have been issued in this regard, which is not liable to be attacked.
13. Earlier, a decision was taken by the State to change the name of 'Rural Medical Assistant' as 'Assistant Medical Officer' which was noted as not reconciling with the submissions made before this Court from the part of the State that the appointment of 'Rural Medical Assistant' was only to help the qualified Medical Officers and not to provide any independent medical treatment as regular Doctors. It will be worthwhile to refer to the sequence of events in this context.
14. When the matter came up for consideration before this Court on 26.04.2017, a common interim order was passed in the following terms:

“We are dealing with two public interest litigations and another writ petition. The writ petition is by the Indian Medical Association, Chhattisgarh. The public interest litigations are by an organization of Doctors as well as an organization of nurses and other similarly situated workers in the field of health.

The Chhattisgarh levied through these writ petitions is to the Chhattisgarh Chikitsa Mandal Adhiniyam, 2001 (for short, 'the Act').

We have heard the Learned Senior counsel appearing for the petitioners in one of the matters, the other Learned Advocates appearing for the other petitioners, Learned Advocates appearing for the Medical Council of India, the contesting respondents, Learned Additional Advocate General and Learned Assistant Solicitor General.

In its sum and substance, the challenge to the statute is on the premise that there is a clear unauthorized encroachment into the legislative field occupied by the Union in as far as the impugned legislation is made tapering down the prescriptions as to the qualifications for the medical practitioners.

This takes us to the provisions of Section 2 of the Act. For the purpose of the Act, unless the context otherwise requires, Section 2(c) defines 'medicine' to mean in the manner in which it is stated therein. The exclusionary clause inbuilt in that definition clause appears to be the main content of that provision. The sweep of the exclusionary clause results in exclusion of Allopathy, Homeopathy, Ayurveda, Naturopathy, Unani medicine and veterinary medicine and surgery. What could fall within the definition of medicine for the purpose of the Act could be only what may be treated as alternative medicine in all its branches excluding all the categories which we have noted hereinbefore.

In the civilized world, certain usages means certain things. The common parlance theory is resorted to when the definition clause becomes unworkable. We recall these principles for ourselves now because the definition of 'medicine' in the Act is couched in such a way that even if we venture to

dive deep into the different aspects in the field of medicine, we would not be able to reach anywhere in our search for the concept of the alternative medicine that would fall within the definition of 'medicine' in the Act. Our pursuit in that regard will be like searching for the black cat in a dark room which is not there, Legislative actions cannot lead to illusory situations because certainty of the applicable law is itself an inbuilt guarantee as to the equal protection of the laws as part of the equality doctrine contained in Article 14 of the Constitution of India.

We say all the aforesaid now because we do not intend or proceed to decide these writ petitions without giving appropriate opportunity for the State Government and the Union Government to think over the matter further, in the light of certain submissions made by the Learned Additional Advocate General. The learned Additional Advocate General described before us the plight of the rural masses who are stated to be greatly deprived of medical aid. He says that lack of Doctors who are qualified in terms of the prescriptions of the Medical Council of India or those other Councils, which are dealing with different other systems of medicine, is a serious challenge that the State Government is facing. He pleaded that all those who are working with the Government on regular, contract or temporary basis after acquiring the qualifications prescribed under the impugned Act are now employed in what we may describe as the providers of the connectivity between the mainstream medical health scenario through the qualified Doctors and the end users. He describes that those persons essentially act as providers of First-Aid or other support modalities which would aid the patients to reach better medical help as is required. He also

says that the State Government had taken the matter in issue with great concern having regard to the plight of the marginalized socio-economically challenged rural communities and the success of such a system in the State of Chhattisgarh has attracted the national attention. According to him, the Central Government appears to be in the process of considering a national modality of an alternative mode of intermediary medical help otherwise than through Doctors qualified in terms of the statutory prescriptions and resultant degrees governed by the currently available central legislations. He also makes reference to a communication addressed by the Central Government to the State Government in that regard.

Alongwith the challenge levied to the statue in question, we are faced with the plight of the end consumers of the system and also the plight of those who are working with the government on regular, contract or temporary basis and have been trained following the modality prescribed in the impugned Act. We cannot ignore the fundamental rights of the rural population which, notwithstanding their socio-economic challenges, are also facing acute social exclusion and having their domicile in remote places from where true and timely access to better medical help to better pastures in cities remains a mirage.

In the aforesaid view of the matter, we are inclined to adjourn these writ petitions for the time being hoping that the State Government will place before use its further views in the matter which obviously would require a policy decision at the hands of the Government. This should be treated as an opportunity where the Government can focus their attention on the real needs of the end consumers of the health management scenario and

the medical service systems in the State, particularly in the rural area thereby leading to a better resolution of the probable aftermath of these writ petitions, if they were to be ultimately allowed.”

15. It was followed by another order dated 04.07.2019, which is to the following effect:

“In view of the various interim orders passed by this Court in these matters including the Public Interest Litigation with reference to the enactment of the Chhattisgarh Chikitsa Mandal Adhiniyam, 2001 by the State, the recognition of the persons identified to treat the patients in the rural area labouring the mass Rural Medical Assistants for conferment of a degree having a span of three years and the nature of challenge raised, it is noted that the various queries raised by this Court and observations were cause to be construed by the State that a policy decision was required to be taken, as discernible from the last interim order dated 26.04.2017.

To brush up the sequence of events, heard the learned counsel appearing for the Petitioners, the learned Counsel appearing for the Medical Council of India, the learned Advocate General representing the State and Counsel for the private Respondents.

With regard to the challenge against the particular post based on the Indian Medical Council Act, 1956, it has been brought to the notice of this Court that the Government has put an end to the said course in the month of September, 2008 and no fresh students have been admitted to the same. The issue, stands confined to the fate of the students, who have already completed the course during the said span, i.e. from 2001-2008 and come out successful for willing employment as RMAs. The stand of the Government is that the case of the Petitioner is that the State cannot legislate on the subject and that the 'Act' is contrary to the mandate of the Indian Medical Councils Act is not correct. It is pointed out that the State legislation

has been necessitated because the State is having large extent of rural segments where no qualified doctor is available to cater to the need of the patients. To facilitate extension of proper medical care to the needy public, some arrangements had to be made, at least to preliminary extent. Accordingly, a policy decision was taken to provide such a 'course' to assist the doctors and to appoint the qualified persons as Rural Medical Assistants. The said Rural Medical Assistants are never intended to be substitutes for the regular doctors and they stand much on a lower pedestal, whose job specification is different and not equal or comparable to that of a regular doctor.

When the State points out that the enactment to start the course or the recognition of the person identified to be posted as RMAs will not affect the regular doctors, the learned counsel appearing for the Petitioners points out that the posts of regular doctors are being sought to be converted to accommodate the persons identified as RMAs. It is in the said context, that the notification bearing No. F12-02/12/नौ/17 dated 31.03.2012 (Annexure P1) has been sought to be challenged in WP(PIL) 32/2012.

On going through the contents of the said notification, it is seen that altogether 4172 posts in different disciplines/fields are sought to be created to meet the requirements by the Health Ministry, Department of Health. Out of the said total of 4172 posts, 741 posts are that of Rural Medical Assistants (Gramin Chikitsak Sahayak). Though it is mentioned that all the posts have been created in addition to the existing stream; but in the remarks column at serial number 3 (Gramin Chikitsak Sahayak), it is stated that 741 posts are created by converting one of the two posts of regular doctors. The stipulation therein is "चिकित्सा अधिकारी के स्वीकृत दो पद में सेक पद को समर्पित करते हुए" by virtue of the said course, 741 posts have been abolished from the total number of regular doctors and only 741 posts remain in the field occupied by the regular doctors. The correct factual situation is, however, still to be ascertained

after getting further instructions in this regard. When the Government says that the attempt is only to extend medical facilities in the rural areas, where no regular doctor is willing to come and work, the abolition of the post and the creation of 741 posts of RMAs has to be reconciled with reference to the contention raised from the part of the State as to the purpose and object sought to be achieved. It is also to be ascertained whether the surrendering of one of the two posts is in respect of the primary health centers where there are two posts of regular doctors or is it to provide a supporting staff by creating further vacancies to assist the regular doctors available in the existing centers. It is also to be borne in mind that the situation which was prevailing in the year 2001 when the first writ petition was filed before this Court is not the one which prevails now, after two decades. How the issue can be tackled without adversely affecting the rights of the regular doctors and also those persons already identified as RMAs is a matter for the Government to consider.

The learned counsel for the Government concedes that, though a policy decision was ordered to be taken by this Court, as per the interim order dated 26.04.2017, it could not be taken so far for various reasons; however, assuring and undertaking that a policy decision will be taken by the Government immediately; for which six weeks' time is sought for. We find it appropriate to grant six weeks' time to put everything on record."

16. The time to take a 'policy decision' as mentioned in the above orders was extended further by one month, as per the order dated 13.12.2019 which reads as follows:

"Despite passing of very detailed order on 04.07.2019 by this Court as to the various aspects sought to be clarified by the Government, also with reference to the order dated 26.04.2017 to take a policy decision in the matter, it was submitted across the bar that a policy decision will be taken by the Government for which, time

was sought for by six weeks. This matter was recorded and the case was adjourned accordingly.

Today, it is stated that an additional return dated 20.08.2019 has been filed on behalf of the Respondent/State along with some documents. But, on going through the same, it does not reveal anything with regard to the policy decision taken or as to the steps taken in this regard, but for the stand of the Government already put on record.

Shri Chandresh Shrivastava, learned counsel representing the State submits that the Rural Medical Assistants are accommodated only to assist the regular Doctors and are not permitted to function as regular Medical Doctors.

The said submission is sought to be rebutted by Shri Sudeep Johri, learned Counsel representing the Petitioners to the effect that the materials collected by the Petitioners reveal that such Rural Medical Assistants are posted at places even where there are no Doctors and they are treating the patients without proper qualifications recognized by the Medical Council of India.

Learned Counsel for the Petitioners seeks time to produce the materials collected as above, along with an affidavit.

Learned Counsel representing the State seeks for one more opportunity to reconcile with the position.

We find it appropriate to grant one month's time to the State to have the matter dealt with as mentioned in the order dated 04.07.2019 passed by this Court and to explain the subsequent events."

17. When the matter was taken up for consideration on 17.01.2020, it was brought to the notice of this Court by the learned counsel representing the State that, pursuant to the orders passed by this Court, a '**policy decision**' dated **16.01.2020** was taken with respect to the post of 'Rural Medical Assistant' and that the Government has cancelled/withdrawn the designation of 'Assistant

Medical Officer' accorded to the 'Rural Medical Assistant' as borne by Annexure A/1 produced alongwith I.A. No. 11 of 2020 dated 17.01.2020. The aforesaid policy decision/order, as described in paragraph 3 of the said I.A. is to the following effect:

“That the aforesaid policy decision/order exhibits the following:-

- That all the RMA's in the state would be under direct control/supervision of the Medical Officer/Block Medical Officer working at primary health centres and other community health centres. The RMA would work as assistant to the medical officer.
- That RMA's would work under supervision and guidance of the Medical Officer/Block medical officer at the primary health centres and health and wellness centre while national programmes are being implemented/executed.
- There would be total bar for RMA's to practice independently and in case they are found indulging in the same disciplinary action would taken against them.
- RMA's would not be allowed to use prefix Dr. before their name.
- RMA's would only provide first aid/stabilization in cases of disease/serious conditions/emergency situations and for further medical aid/help would refer the patient to higher health centre.
- RMA's would be under the supervision of the medical officer also vide medium of teleconsultation/telemedicine.
- That the post RMA's in the Health department would be below the cadre of Medical officer but would be above other cadres like pharmacist, lab technician, staff nurses and other employees of primary health centres and sub-health centres.

- RMA's would work under supervision of the Medical Officer/Block Medical Officer while monitoring and supervising of the national health programmes at primary health centres/sectors (sub-health centres/health and wellness centre) for its better implementation/execution. The RMA's would also review the implementation/execution of the national health programmes under supervision of the Medical Officer/Block Medical Officer.
- RMA's are bound to follow the order/instructions issued by the state government and directorate of health services from time to time.
- That the order is to be implemented from immediate effect.”

18. By virtue of the turn of events, the averments, allegations and apprehensions expressed by the Petitioners in the three writ petitions that there was a chance for the 'Rural Medical Assistants' to function as Doctors without having proper qualification to practice 'Allopathy' stands negated. As per the above proceedings, it has been categorically stated that the 'Rural Medical Assistants' would not be allowed to use the prefix 'Doctor' before their names; that there would be a total bar for the 'Rural Medical Assistants' to practice independently and in case they indulge in the same, disciplinary action would follow; that their service would only be to provide 'first aid/stabilization' in cases of disease/serious conditions/emergency situations and for further medical aid/health, they would refer the patients to higher health centers; that the 'Rural Medical Assistants' would be under the supervision of Medical Officers and further that the post of 'Rural Medical Assistant' in the Health department would be below the cadre of Medical Officers, but above the other cadres like Pharmacist, Lab technician, Staff Nurse and other employees of the Primary Health Centers and Sub Health Centers.

19. In the said circumstances, the main purpose of filing the Writ Petition No. 930 of 2001 and Writ Petition (PIL) No. 32 of 2012 stands satisfied and no more deliberation is required in this regard. By virtue of amendment to the original statute impugned in Writ Petition No. 930 of 2001 as per Annexure P/5 and the subsequent amendments, the 'Rural Medical Assistants' are not given any right to practice 'Allopathy' and their job stands well defined as per Annexure A/1 dated 16.01.2020 produced alongwith the I.A. No. 11 of 2020. This being the position, the challenge against the statute is no more germane to be considered by this Court; more so when the course itself has come to an end and no more admissions have been made after the year 2008, as submitted by the learned counsel for the State. Further scrutiny to consider the vires of the statute, as amended, can only be an academic exercise and this Court does not find it necessary to deal with the same, as it has become inoperative, as submitted on behalf of the State.
20. Coming to the remaining prayer as involved in Writ Petition (PIL) No. 32 of 2012 with regard to the creation or conversion of 741 seats of 'Medical Officers' into 'Rural Medical Assistants' posts, the posts of 'Rural Medical Assistants' are not equated to the posts of 'Medical Officers'. They are never permitted to have any independent practice and are put under the supervision of Regular Doctors, with limited job requirement/job specification as noted in Annexure R/1 produced alongwith I.A. No. 11 of 2020.
21. Whether the number of Regular Doctors should be decreased or increased is a matter to be considered and decided by the Government, subject to the actual requirements. So far as the creation of the posts of 'Rural Medical Assistant' is not to appoint them as substitutes for Regular Doctors and since the State has consciously placed them below the 'Medical Officers' with limited job/activities for giving first aid/primary attention and to assist qualified 'Medical Officers', this Court does not find any reason to entertain the challenge as to the notification

dated 21.03.2012 produced as Annexure P/1 in Writ Petition (PIL) No. 32 of 2012.

22. Shri Sudeep Johri, the learned counsel for the Petitioners in Writ Petition (S) No. 2849 of 2013 submits that the Respondent/State had placed 'Rural Medical Assistants' in the re-designated post of 'Assistant Medical Officers' vide order dated 01.04.2019 and the same has been placed on the web-portal of the Respondent/State in the form of seniority list dated 08.04.2019 (copy of which has been produced as Annexure P/23 (colly.) alongwith I.A. No. 4 of 2020). With reference to Annexure P/24 obtained under RTI Act, it is pointed out that the 'Rural Medical Assistants' are being posted in the Primary Health Centers, Community Health Centers and Wellness Centers as 'Assistant Medical Officers' and the 1st Respondent/State has even deputed 'Rural Medical Assistants' as Gynecologists in the 'Pradhan Mantri Surakshit Matritva Abhiyan' to treat pregnant ladies under the said scheme, though they are unqualified according to the Medical Council of India.
23. The above submission does not require any more consideration, in view of the subsequent turn of events, whereby the Government has taken a 'policy decision' on 16.01.2020, as borne by Annexure R/1 produced alongwith I.A. No. 11 of 2020 filed by the State, contents of which have already been extracted to the effect that 'Rural Medical Assistants' can't use the prefix 'Dr.' alongwith their name and they will not have any right to pursue independent practice, but will only act under the supervision of qualified Medical Doctors, as helping hands to the extent as prescribed.
24. The learned counsel for the Petitioners in Writ Petition (S) No. 2849 of 2013 submits that the remaining grievance as on date is only with regard to the placement given to the 'Rural Medical Assistants' over and above the Petitioners who are qualified Nurses and other Para Medical Staff. It is contended that the 'Rural Medical Assistants' are wrongly given higher pay

scale and that the Petitioners should be given atleast parity to the position assigned to the 'Rural Medical Assistants'. This is a new case/cause of action which is not covered in the writ petition and not brought to the notice of the Respondent-State, to be dealt with at the first instance. In the said circumstances, we find it appropriate to grant liberty to the Petitioners to project their grievance, if any, before the State Government for consideration and pursue appropriate remedy, in accordance with law, by way of separate proceeding.

25. In the above facts and circumstances, no further orders are necessary. All the three writ petitions are disposed off with the observations as noted above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge