

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION (WP) NO. 1773 OF 2002

1. Indian Medical Association,
Nagpur, through its Chairman,
Legal Committee, Dr. Milind M. Naik,
having Office at IMA House, North
Ambajhari Road, Nagpur-440 010.
2. Vidarbha Association of Pathologists &
Micro-biologists, through its President,
Dr. Lalit Jain, LOKMAT Bldg, Wardha
Road, Nagpur. Petitioners

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1. State of Maharashtra, through its
Secretary, Department of Medical
Education & Drugs, Mantralaya,
Mumbai-400 032.
2. State of Maharashtra, through its
Secretary, Home Department,
Mantralaya, Mumbai-400 032.
- 3 The Commissioner of Police, Nagpur.
- 4 The Union of India, through its
Secretary, Ministry of Health & Family
Welfare, Red-Cross Annexe Bldg, New
Delhi-110 001.
- 5 Medical Council of India, through its
Secretary, Aiwan-E-Galib Marg, Kotla
Road, Opp. Mata Sundari College of
Women, New Delhi-110 002.

- 6 Medical Laboratory Technology Association, Nagpur through its President, Dhananjay s/o. Yeshwant Kulkarni, Aged Major, R/o. 7, Rajivnagar, Somalwada, Wardha Rd., Nagpur.
- 7 Maharashtra Paramedical Council, through its Registrar, C/o. DMER Government Dental College And Hospital Building, 4th Floor, St. George's Hospital Compound, P. Demela Road, Fort, Mumbai-01. ... Respondents

Shri B.G. Kulkarni, Advocate for Petitioners.

Shri D.P. Thakare, Addl.G.P. for Respondent Nos.1 to 3.

Shri A.S. Jaiswal, Senior Advocate for Respondent No.5.

Shri M.G. Bhangade, Senior Advocate for Respondent No.6.

Shri S.P. Dharmadhikari, Senior Advocate with Shri R.H. Chandurkar, Advocate for Respondent No.7.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATED : 28 JANUARY 2021

ORAL JUDGMENT : (PER:- NITIN JAMDAR, J.)

This petition is filed by the Indian Medical Association and Vidarbha Pathologists & Microbiology Association in the year 2002 with these prayers.

“i) By a writ of mandamus or by a suitable writ, order or direction, the respondents 1 to 3 may kindly be directed to take immediate action in the matter for closing and stopping the practice of running a pathology laboratories by the candidates holding D.M.L.T. qualification in the State of Maharashtra as the said qualification is not recognized by the Medical Council of India and as these persons are not registered with the Maharashtra State Medical Council.

ii) By a writ of mandamus or by a suitable writ, order or direction, the communication issued by the respondent No.1, State Government, dated 17.10.2001, 4.12.2001 and 11.12.2001 (Annexures D, E. & F) may kindly be quashed and set aside, the same being contrary to the provisions of Indian Medical Council Act, 1956 and Maharashtra Medical Practitioners Act, 1961.

iii) By a writ of mandamus or by a suitable writ, order or direction, the respondents 1, 2 and 4 may kindly be directed to frame necessary regulations imposing all requisite restrictions on the practice of pathology by the candidates holding D.M.L.T. qualification,

iv) By a suitable writ, order or direction interim, the respondents 1 to 3 may kindly be directed to stop and close the practice of pathology by the candidates holding D.M.L.T. qualification in the State of Maharashtra and the effect and operation of the decision of the State Government communicated vide letters dated 17.10.2001, 4.12.2001 and 11.12.2001 may kindly be stayed during the pendency of the present petition,

v) Allow the petition with costs, and

vi) Grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

2. Since the petition was filed, in the last two decades, various events have taken place. The Maharashtra Paramedical Council Act, 2011 has come into force. The Government of Maharashtra issued a Resolution on 24 May 2016 stating that the persons, who are holding D.M.L.T. qualification could not practice and it was directed that the penal action be initiated. This was the relief sought by the Petitioner. But within two days, i.e. on 26 May 2016, another Government Resolution was issued staying the effect of Government Resolution dated 24 May 2016. Further on 3 May 2017 the Act of 2011 was amended and published under the authority of Governor. The Maharashtra Paramedical Council Act and the amended Act came into force on 1 July 2017. The Notification is also issued by the Ministry of Health and Family Welfare on 18 May 2018 which was subsequently amended.

3. Subsequent Government Resolutions though placed on record are not the subject matter of any challenge in this petition. The learned Counsel for the Petitioner accepts that for the Petitioner to succeed, they will have to deal with these subsequent statutory instruments.

4. The petition is not amended to challenge these statutory. Even an application for amendment is not filed. The learned Counsel for the Petitioner submits that though it is correct that the petition is

pending since the year 2002, statutory instruments have been brought into force and Government Resolution have been issued in last five years. Regardless, to succeed the Petitioner must deal with these Resolutions and the Act. In the absence of any challenge, we cannot examine the validity of the Act and the Government Resolutions. The Learned Counsel for the Petitioner orally seeks liberty contending that the challenge be kept open.

5. In view of this position, We dispose of this Writ Petition, keeping it open to the Petitioner to agitate the cause raised in this petition dealing with the above mentioned subsequent Resolutions and the Act.

6. With this liberty, the Writ Petition is disposed of.

[ANIL S. KILOR, J.]

[NITIN JAMDAR, J.]