

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

+ WRIT PETITION No.1111 OF 2019

AND

WRIT PETITION No.10240 OF 2021

% Date: 06.12.2022

M/s. Healthcare Reforms Doctors Association and others.

... Petitioners

v.

\$ The State of Telangana,
Represented by its Special Chief Secretary,
Health, Medical and Family Welfare Department,
Secretariat buildings, Hyderabad,
and another.

... Respondents

! Counsel for the petitioners : Mr. Sama Sandeep Reddy

^ Counsel for respondents : Mr. N.Praveen Kumar,
Government Pleader for Health,
Medical & Family Welfare Department

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (2012) 1 SCC 123
2. 1950 Indian Law Reporter (ILR) All. 845 = AIR 1950 All. 11
3. (2011) 10 SCC 106

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.1111 OF 2019
AND
WRIT PETITION No.10240 OF 2021

COMMON ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This order will dispose of writ petition Nos.1111 of 2019 and 10240 of 2021.

2. We have heard Mr. Sama Sandeep Reddy, learned Counsel for the petitioners and Mr. N. Praveen Kumar, learned Government Pleader for Health, Medical & Family Welfare Department, Government of Telangana representing the respondents.

3. Writ petition No.1111 of 2019 has been filed by M/s.Healthcare Reforms Doctors Association, a society registered under the then Andhra Pradesh Societies Registration Act, 2001 (now Telangana Societies Registration Act, 2001) and is represented by its President Dr K.Mahesh Kumar, who is a resident of Saroornagar in the city of Hyderabad. Prayer made in the writ petition is as follows:

- a. setting aside para 4(3)(i) of the notification in G.O.Ms.No.68 dated 03.08.2015 issued by the 1st

respondent as illegal and arbitrary, without jurisdiction;

- b. setting aside G.O.Ms.No.15 dated 06.01.2016 issued by the 1st respondent as illegal and arbitrary, without jurisdiction and direct the 1st respondent to immediately conduct election to choose the members of the 2nd respondent as per section 3(2) of the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Act No.23 of 1968) Amended Act No.28 of 1986 and Amended Act No.10 of 2013 and the Telangana State Medical Council Adaptation notification vide G.O.Ms.No.68 dated 03.08.2015 issued by the 1st respondent;
- c. pass such other order or orders as are deemed fit and proper in the circumstances of the case.

4. Likewise, writ petition No.10240 of 2021 has been filed by three doctors of Ranga Reddy District in the State of Telangana being Dr. Arundhathi Baki, Dr. Pavan Kumar Namala and Dr. Gopireddy Anirudha. In this writ petition also, petitioners seek quashing of para 4(3)(i) of the notification in G.O.Ms.No.68 dated 03.08.2015 issued by the first respondent.

5. Issue raised in both the writ petitions is to the constitution of Telangana State Medical Council, a disciplinary and controlling body established under the then Andhra

Pradesh Medical Practitioners Registration Act, 1968 (now Telangana Medical Practitioners Registration Act, 1968), as amended, by having the elected members representing the practising doctors who are members of the Telangana State Medical Council, a majority say in its functioning as well as holding of election to the Medical Council by setting aside the Interim Medical Council.

6. For the sake of convenience, we may refer to the facts narrated in the first writ petition, namely, writ petition No.1111 of 2019.

7. Legislature of the composite State of Andhra Pradesh enacted the Andhra Pradesh Medical Practitioners Registration Act, 1968. It is an act to consolidate and amend the law relating to registration of medical practitioners of modern scientific medicine in the then composite State of Andhra Pradesh. In terms of Section 3(1) of the Andhra Pradesh Medical Practitioners Registration Act, 1968 (briefly, 'the Medical Practitioners Registration Act', hereinafter), the State Government by notification shall establish a Council called Andhra Pradesh Medical Council which is a body corporate

having perpetual succession and a common seal which can sue or be sued in its name. Primary responsibility of the Medical Council is to register the eligible medical graduates of modern scientific medicine, maintain professional standards and to discharge other functions as provided in the Medical Practitioners Registration Act as well as those provided in the Indian Medical Council Act, 1956. It is basically a watchdog body on the professional activities of medical practitioners. As per Section 3(2), Andhra Pradesh Medical Council (briefly, 'the Medical Council' hereinafter) shall consist of the following members:

- (a) Two members to be elected in the prescribed manner by the members of the Executive Council of the University of Health Sciences from amongst the persons in the State holding any degree in modern medicine;
- (b) Thirteen members to be elected in the prescribed manner by the registered medical practitioners from amongst themselves;
- (c) Six members to be nominated by the State Government out of whom two shall be from amongst teaching staff of the medical colleges in the State; and
- (d) Director of Medical Education and Director of Health and Family Welfare.

7.1. As per the Amendment Act No.28 of 1986 with effect from 01.04.1990, Commissioner of Andhra Pradesh Vaidya

Vidhana Parishad was added as a member of the Medical Council under category (d) above.

8. Section 4 provides that an elected or nominated member of the Medical Council shall hold office for a period of five years from the date of his/her election or nomination.

8.1. Sub-section (1) of Section 5 provides that the Medical Council shall elect from amongst its members a Chairman who shall ordinarily hold office for a period of two years from the date of his election as Chairman and shall be eligible for re-election. As per the proviso, for a period of two years from the date of the first constitution of the Medical Council, one of the *ex officio* members referred to in clause (d) of sub-section (2) of Section 3 nominated by the government shall be the Chairman of the Medical Council.

9. The then Government of Andhra Pradesh had issued a notification vide G.O.Ms.No.662 dated 19.12.1991 constituting the governing body of the Medical Council whereafter the first meeting of the Medical Council was held on 21.03.1992.

10. Elections were held to the Medical Council in the later part of the year 2006. Following which the elected body of the Medical Council took charge on 03.01.2007.

10.1. On 13.11.2011, Chairman of the Medical Council wrote to the then Government of Andhra Pradesh stating that term of the elected body was going to expire on 02.01.2012. It was mentioned that as per requirement of the Medical Practitioners Registration Act, the electoral rolls would have to be prepared, updated and notified for conducting elections to the Medical Council. Because of administrative problems, the electoral rolls could not be revised and notified. Chairman mentioned that the said exercise would be completed by 31.12.2011. In those circumstances, he requested the government to extend the term of the aforesaid elected body by a period of one year.

11. The then Government of Andhra Pradesh issued G.O.Rt.No.8 dated 02.01.2012 notifying an interim council as a stop gap arrangement with six doctors as its members for a period of one year or till the Medical Council was freshly constituted, whichever was earlier. Again, acting on a letter dated 05.10.2012 of the Chairman, the State Government

issued G.O.Rt.No.1839 dated 28.12.2012 extending the term of the interim council constituted vide G.O.Rt.No.8 dated 02.01.2012 for a further period of one year or until completion of elections to the Medical Council, whichever was later.

12. Thereafter, by way of Amendment Act No.10 of 2013, certain amendments were carried out to the Medical Practitioners Registration Act. Most notable and relevant for the present case is that the number of elected members as provided under Section 3(2)(b) was reduced from thirteen to seven members. Again, the number of nominated members as per Section 3(2)(c) was reduced to four. That apart, Vice Chancellor of Dr NTR University of Health Sciences was also made a member of the Medical Council under Section 3(2)(d).

13. The composite State of Andhra Pradesh was bifurcated into two states, the State of Telangana and the State of Andhra Pradesh by virtue of the Andhra Pradesh Reorganization Act, 2014, with effect from 02.06.2014. As on 01.06.2014, the Medical Council to be constituted under Section 3(2) consisted of the following:

- (a) Two members to be elected in the prescribed manner by the members of the Executive Council of the

University of Health Sciences in the State from amongst the persons in the State holding any degree in modern medicine;

(b) Seven members to be elected in the prescribed manner by the registered medical practitioners from amongst themselves;

(c) Four members to be nominated by the Government of whom two shall be from amongst such members of the teaching staff of the medical colleges in the State as are registered practitioners; and

(d) Director of Medical Education, Director of Health and Family Welfare, Commissioner, Andhra Pradesh Viaidya Vidhana Parishad and Vice-Chancellor, Dr. NTR University of Health Sciences, A.P.

14. After bifurcation of the composite State of Andhra Pradesh and formation of the State of Telangana, first respondent issued G.O.Ms.No.68 dated 03.08.2015 in order to adapt the Medical Practitioners Registration Act, as amended as on 02.06.2014, for the purpose of facilitating its application to the new State of Telangana. The above exercise was carried out under Section 101 of the Andhra Pradesh Reorganization Act, 2014. In the notification which was issued vide G.O.Ms.No.68 dated 03.08.2015, Section 3(2) of the Medical Practitioners Registration Act was amended; instead of seven elected members, the same was reduced to five members. Further, in place of 'Dr. NTR University of Health Sciences,

A.P' in Section 3(2)(d), 'Kaloji Narayana Rao University of Health Sciences, Telangana' was substituted.

15. Thereafter, first respondent again issued G.O.Rt.No.15 dated 06.01.2016 constituting an Interim Telangana State Medical Council comprising of four registered medical practitioners as its members. However, G.O.Rt.No.15 dated 06.01.2016 is silent as to the term of the Interim Telangana State Medical Council though the same was intended to be only a stop gap arrangement to discharge day to day activities.

16. Petitioner has expressed two grievances. The first grievance is that since the year 2007 there has been no election to the Medical Council. Right now only an Interim Medical Council constituted vide G.O.Rt.No.15 dated 06.01.2016 is in place. Even the said G.O.Rt.No.15 had constituted the Interim Telangana State Medical Council only as a stop gap arrangement. This situation cannot continue for an indefinite period. Elections are required to be held for constituting a regular Medical Council.

16.1. Second grievance pertains to reduction of elected members in the Medical Council by G.O.Ms.No.68 dated

03.08.2015. Initially number of elected members were thirteen which was later on reduced to seven and finally to five. But there is no proportionate reduction of nominated members. As a result, the elected members are not having an effective say which is contrary to the intent and object of the Medical Practitioners Registration Act and also to the autonomy of the Medical Council. It is in the above context that writ petition No.1111 of 2019 came to be filed.

17. On 10.02.2021, this Court had noted that respondents had not filed counter affidavit. Court wanted to know the reason for not holding elections to the Medical Council and instead being managed by an *ad hoc* committee. Learned Government Pleader who represented the State was directed to obtain instructions as to the date on which steps would be taken to notify the elections for constituting the Medical Council.

18. In the proceedings held on 17.03.2021, learned Additional Advocate General had submitted that after bifurcation of the composite State of Andhra Pradesh option was given to the doctors as well as to the other professionals to

register themselves either in the State of Andhra Pradesh or in the State of Telangana. By way of notification dated 13.02.2020, time was granted to all the doctors upto 31.03.2021 to get themselves registered in the State of Telangana if they propose to practice in the State of Telangana. Till the time the order dated 17.03.2021 was passed, about 17,000 doctors had registered themselves in the State of Telangana. After 31.03.2021, the electoral list would be finalized for conducting elections to the Medical Council. To complete the process, a period of three months was sought for.

18.1. In view of the above submissions made by learned Additional Advocate General, this Court granted time as sought for and directed that results of the election to the Medical Council should be declared and placed on record by way of an affidavit by the first respondent.

19. It was thereafter that the second writ petition was filed expressing the apprehension that elections would be held to the Medical Council in the skewed ratio as provided in paragraph 4(3)(i) of the notification in G.O.Ms.No.68 dated 03.08.2015 and sought for quashing of the same.

20. It was contended before the Court that the notification issued vide G.O.Ms.No.68 dated 03.08.2015 was an executive order by virtue of which the State could not have amended the Medical Practitioners Registration Act by disproportionately reducing the number of elected members in the Medical Council; only by a legislative act the same can be done.

21. In view of such submission, this Court by order dated 26.04.2021 while issuing notice directed deferment of elections to the Medical Council till the next date of hearing, further directing listing of W.P.No.10240 of 2021 with W.P.No.1111 of 2019.

22. It may be mentioned that the deferment order has since been continued and is now holding the field.

23. In W.P.No.1111 of 2019 first respondent filed affidavit. It has been mentioned that the Medical Practitioners Registration Act was initially amended vide Amendment Act No.28 of 1986 which came into effect from 01.04.1990. It was again amended by way of the Amendment Act No.10 of 2013 which came into force with effect from 09.07.2013. After coming into force of

the Andhra Pradesh Reorganization Act, 2014, by virtue of Section 101 thereof, State of Telangana has adopted the Medical Practitioners Registration Act as it existed on 02.06.2014 for the purpose of facilitating its application to the State of Telangana.

23.1. After referring to Section 3(2) of the Medical Practitioners Registration Act, first respondent has mentioned that by virtue of G.O.Ms.No.68 dated 03.08.2015, instead of thirteen elected members under Section 3(2)(i), it was made five members besides certain other amendments.

23.2. Reference has been made to Section 101 of the Andhra Pradesh Reorganization Act, 2014 and thereafter has contended that Government of Telangana has adapted the Medical Practitioners Registration Act vide G.O.Ms.No.68 dated 03.08.2015. Accordingly, amendments were carried out in Section 3(2)(b) of the Medical Practitioners Registration Act, whereby the number of elected members has been reduced from thirteen to five. From around 97000 medical practitioners registered with the Andhra Pradesh Medical Council, after bifurcation, around 47,000 medical practitioners have opted

registration with the Telangana Medical Council. It is submitted that the reduction was necessitated because after bifurcation of the composite State, Medical Practitioners of one region of the undivided State got registered themselves with the Medical Council. Therefore, in proportion to the medical practitioners who got themselves registered with the Medical Council, the number of elected members has been reduced to five. Answering deponent has mentioned that in addition to the elected members, there are other categories of members such as six members to be nominated by the government, four *ex officio* members and two members to be elected by the executive council of the University of Health Sciences.

24. First respondent has also filed an additional affidavit justifying the issuance of G.O.Ms.No.68 dated 03.08.2015 as a valid exercise of power traceable to Section 101 of the Andhra Pradesh Reorganization Act, 2014. Further, the reduction of elected members from thirteen to five has also been justified on the basis of the division of population between the two successor States of Andhra Pradesh and Telangana.

25. Second respondent has filed an affidavit through its Registrar more or less on the same lines as the affidavits filed by the first respondent. It is also stated that many doctors are yet to renew their registration. Steps have been taken for getting the medical practitioners renew their registration.

26. Identical affidavits have been filed by respondent Nos.1 and 2 in W.P.No.10240 of 2021.

27. Mr. Sama Sandeep Reddy, learned counsel for the writ petitioners made three-fold submissions. Firstly, he submits that last time elections were held to the Medical Council was in the year 2007. Thereafter, no elections have been held. Now the Interim Medical Council is holding office. It is purely an *adhoc* body. Already it is in office for more than six years since the year 2016. An *adhoc* body cannot continue for an indefinite period. Therefore, holding of elections to the Medical Council has become imperative. As such, G.O.Rt.No.15 dated 06.01.2016 cannot be sustained.

27.1. Second limb of his argument is that the number of elected members in the Medical Council has been reduced from thirteen to five. While the State may be justified in

reducing the number of elected members proportionately with the number of medical practitioners, it is not open to the State at the same time not to proportionately reduce the nominated or the *ex officio* members. Altogether they are more than the elected members. Therefore, in an indirect manner, the government is running the show and thus undermining the autonomy of the Medical Council. He therefore submits that to uphold the autonomy of the Medical Council, it is essential that majority say of the elected members is maintained.

27.2. Third argument of learned counsel for the writ petitioners is that in the Medical Practitioners Registration Act the number of elected members was mentioned as thirteen. Though under Section 101 of the Reorganization Act, 2014, the provisions of the Medical Practitioners Registration Act has been adapted and made applicable to the State of Telangana, any substantive amendment to the Medical Practitioners Registration Act would require legislative sanction. No such amendment can be made by an executive order. Therefore, G.O.Ms.No.68 dated 03.08.2015 cannot be sustained.

28. In reply to the above submissions of learned counsel for the writ petitioners, Mr. N. Praveen Kumar, learned Government Pleader has supported the two G.Os., by contending that there is no infirmity in issuing the said G.Os. He has elaborately referred to Section 101 of the Andhra Pradesh Reorganization Act, 2014 and submits that the limited modification which is manifest in the two government orders is clearly traceable to Section 101 of the Andhra Pradesh Reorganization Act, 2014. The number of elected representatives has been scaled down from thirteen to five keeping in mind the reduction in the number of registered medical practitioners following bifurcation of the composite State. No oblique motive should be read into such a purely administrative decision. He further submits that first respondent will hold elections to the Medical Council as per assurance made to this Court as and when the order deferring holding of elections is lifted. According to him, the apprehension expressed by the writ petitioners regarding erosion in autonomy of Medical Council is wholly misplaced.

29. Submissions made by learned counsel for the parties have received the due consideration of the Court.

30. At the outset, it would be apposite to advert to the Andhra Pradesh Medical Practitioners Registration Act, 1968 (already referred to hereinabove as 'the Medical Practitioners Registration Act') as it stood at the time of bifurcation of the State. It is an act to consolidate and amend the law relating to registration of medical practitioners of modern scientific medicine in the State of Andhra Pradesh and to provide for matters connected therewith. Section 2(c) defines 'Council' to mean the Andhra Pradesh Medical Council (already referred to as 'Medical Council') established under Section 3. As per sub-section (1) of Section 3, government, shall by notification, establish a Council called the Andhra Pradesh Medical Council (Medical Council) which shall be a body corporate having perpetual succession with a common seal which can sue or can be sued by its name. Sub-section (2) of Section 3 deals with constitution of Medical Council. At the time of bifurcation the following members constituted the Medical Council:

- (a) two members to be elected in the prescribed manner by the members of the Executive Council of the University of Health Sciences in the State from amongst persons holding any degree in modern medicine;
- (b) seven members to be elected in the prescribed manner by the registered practitioners from amongst themselves;

(c) four members to be nominated by the government out of whom two shall be from amongst the teaching faculty of medical colleges in the State who are also registered practitioners; and

(d) Director of Medical Education, Director of Health and Family Welfare, Commissioner of Andhra Pradesh Vaidya Vidhana Parishad and Vice-Chancellor of Dr.NTR University of Health Sciences.

31. While sub-section (3) lays down the eligibility criteria for elected members as well as for nominated members, in terms of sub-section (4), the government while making nominations shall have due regard to gender as well as adequate representation of the deprived classes etc. Sub-section (5) clarifies that no person shall be a member of the Medical Council in more than one category as specified in sub-section (2).

32. As per Section 4, whether he is an elected member or is a nominated member, the term of office is for a period of five years from the date of election or nomination. However, he shall be eligible for re-election or re-nomination, as the case may be. Section 5 deals with election of Chairman. As per sub-section (1), the Council shall elect from amongst its members a Chairman who shall hold office for a period of two years from

the date of his election as Chairman and shall be eligible for re-election. However, as per the proviso, for a period of two years from the date of first constitution of the Medical Council, one of the *ex officio* members shall be the Chairman of the Medical Council.

33. In similar manner, the Council shall elect from amongst its members a Vice-chairman who shall perform the functions of the Chairman when the office of the Chairman is vacant.

34. The other provisions of the Medical Practitioners Registration Act may not be relevant for our present purpose. Be that as it may, from the above it is seen that the Medical Practitioners Registration Act provides for constitution of the Medical Council which shall consist of the members as mentioned supra. There are four categories of members – two to be elected by the members of the executive council of the University of Health Sciences; seven to be elected by the registered practitioners from amongst themselves; four to be nominated by the government, out of whom two are from the teaching faculty; in addition there are *ex officio* members. The term of elected or nominated member is five years though he is

eligible for re-nomination. A Chairman once elected can hold office for two years though he is eligible for re-election; however, at the initial stage one of the *ex officio* members was to be the Chairman but for a limited period of two years.

35. We may mention that there is no provision in the Medical Practitioners Registration Act for an interim council. All that the proviso to sub-section (1) of Section 5 says is that for a period of two years from the date of first constitution of the Medical Council, one of the *ex officio* members nominated by the government shall be the Chairman. Thus, under the Act, such an *ex officio* member can be the Chairman for a limited period of two years from the date of first constitution of the Medical Council.

36. As already noticed, by the Amendment Act No.10 of 2013 certain amendments were carried out in the Medical Practitioners Registration Act. What is relevant for our purpose is that in clause (b) of sub-section (2) of Section 3, in place “thirteen members”, it was substituted by “seven members”. In clause (c) of sub-section (2) of Section 3, the six nominated members were reduced to four. That apart, in clause (d) of

sub-section (2) of Section 3, Commissioner of Andhra Pradesh Vaidya Vidhana Parishad and Vice-Chancellor of Dr. NTR University of Health Sciences were added as *ex officio* members nominated by the government.

37. However, the point to be noted is that the substitutions or the reductions in the number of elected members or the reduction in the number of *ex officio* members were carried out through a legislative act of the then State Legislature by way of the Amendment Act No.10 of 2013.

38. Parliament enacted the Andhra Pradesh Reorganization Act, 2014 (briefly, ‘the Reorganization Act’) to provide for reorganization of the existing State of Andhra Pradesh and for matters connected therewith. Section 2 (a) defined “appointed day” as the day to be notified by the Central Government in the official gazette. Central government notified 02.06.2014 as the appointed day. As per Section 3, on and from the appointed day, a new State was formed known as the State of Telangana comprising the territories mentioned thereunder. For our present deliberation, Section 101 of the Reorganization Act is relevant. The same is extracted hereunder:

101. For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation:- In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

39. From a careful analysis of the above, what Section 101 provides for is that to facilitate the application of any law made before the appointed day in relation to the State of Andhra Pradesh to the new State of Telangana and to the residuary State of Andhra Pradesh, the appropriate government may before expiry of two years from the appointed day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or

other competent authority. As per the Explanation, the expression “appropriate government” would mean in respect of any law relating to a matter enumerated in the Union List, the Central Government and as respect any other law in its application to a state, the State Government.

40. The marginal note besides Section 101 reads as: “power to adopt laws”. Insofar marginal notes are concerned, the traditional view is that those cannot be referred to for the purpose of construing an enactment. In earlier decisions, Supreme Court was emphatic in its view that marginal notes in an Indian statute cannot be referred to for the purpose of construing the statute; the marginal note cannot control the meaning of the body of the section if the language employed therein is clear. But, over the years, a view has emerged that reference to marginal notes may be permissible for construing a section in a statute. Of course, insofar articles of the Constitution of India are concerned, marginal notes appended thereto have been held to constitute part of the Constitution as passed by the Constituent Assembly and therefore those have been made use of while constructing the relevant article. In

Prem Parkash Pahwa v. United Commercial Bank¹, it has been held that the notes under the rules cannot control the rules, but those can provide an aid for interpretation of the rules. Further, a note which is made contemporaneously with the rules is part of the rule; it makes explicit what is implicit in the rule. As held in **Prem Parkash Pahwa** (supra), the marginal note in the present case is made contemporaneously with the Andhra Pradesh Reorganization Act. Therefore, the marginal note made besides Section 101 can be said to be a part of the said section.

40.1. Basically and in substance, Section 101 is intended to facilitate application of the earlier laws governing the composite State of Andhra Pradesh to the newly created State of Telangana. It is a provision to facilitate adaptation of the existing laws. The section also enables the appropriate government to make modifications of the law whether by way of repeal or amendment, as may be necessary or expedient. The principal object being adaptation, the modification or amendment contemplated must be construed only to aid such adaptation. It is not a provision for making substantive

¹ (2012) 1 SCC 123

modification or amendment in the law in the process of adaptation. Any substantive amendment would have to be placed before the Telangana Legislature post-adaptation for amending the enactment so adapted.

41. Having noticed the above, we may refer to G.O.Ms.No.68 dated 03.08.2015 and G.O.Rt.No.15 dated 06.01.2016 issued by the Government of Telangana in the Health, Medical and Family Welfare (C1) Department.

42. However, before that we may briefly advert to G.O.Rt.No.8 dated 02.01.2012 issued by the then Government of Andhra Pradesh in the Health, Medical and Family Welfare (C1) Department. From a perusal of the same, it is seen that the elected body of the Medical Council had assumed charge on 03.01.2007. The five year term was to expire on 02.01.2012. Since the requisite steps for holding elections would require some more time, Chairman of the Medical Council requested the government to extend the term of the council. On such request, the government vide G.O.Rt.No.8 dated 02.01.2012 constituted and notified an interim council for a period of one year or till constitution of the Medical

Council whichever was earlier with three *ex officio* members and six members representing medical practitioners. It was notified that Dr. E.Ravinder Reddy who was the then Chairman of the Medical Council would continue as Chairman of the interim council till the new body was elected.

43. Thereafter, the Reorganization Act intervened whereafter Government of Telangana in the Health, Medical and Family Welfare (C1) Department notified the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 in exercise of powers conferred by Section 101 of the Reorganization Act. All amendments carried out to the Medical Practitioners Registration Act upto 02.06.2014 were also adapted with effect from 02.06.2014. In sub-section (1) of Section 4, it was mentioned that for the expression 'Andhra Pradesh' occurring otherwise than in a title or in a citation or description etc, the word 'Telangana' shall be substituted. While deleting clauses (a) and (k) in Section 2, under Section 4(3)(i) it is provided that in sub-section (2) of Section 3, for the words 'thirteen members' as appearing in clause (b), the words 'five members' shall be substituted. The said notification was issued vide G.O.Ms.No.68 dated 03.08.2015.

44. Before we proceed to G.O.Rt.No.15 dated 06.01.2016, we may examine as to whether the first respondent was justified or could have made the amendments in Section 3(2)(b) in terms of Para 4(3)(i) of G.O.Ms.No.68 by substituting thirteen elected members (sic) with five elected members. It is, therefore, necessary to examine the scope and ambit of an adaptation order or provision.

45. In P. Ramanatha Aiyar's **The Law Lexicon**, 3rd Edition, the word 'adapt' has been defined as under:

to make suitable; to fit or suit; to adjust; to alter so as to fit for a new use; to change by adaptation – often followed by to, or for; to make suitable; to alter so as to fit for a new use or condition.

45.1. The word 'adaptation' has been explained as an act or process of adapting, or state of being adapted. The act of adapting or adjusting; the state of being adapted or fitted; adjustment to circumstances or relations. Likewise, 'adaptation order' has been explained as an order issued for the purposes of adaptation, particularly an order modifying the existing laws so as to bring them in conformity with the new constitutional provisions.

46. Likewise, in K.J. Aiyar's **Judicial Dictionary**, 14th Edition, the word 'adapt' has been defined as under:

to make apt or fit; to accommodate; to modify; arrange;
transcript.

46.1. Similarly, the word adaptation has been defined to mean arrangement; transcription.

47. We have referred to the dictionary meaning of the words 'adapt', 'adaptation' and 'adaptation order', because the word 'adaptation' is not a defined expression in the Reorganization Act.

48. British Parliament enacted the Indian Independence Act, 1947, to make provision for setting up in India two independent Dominions, to substitute other provisions for certain provisions of the Government of India Act, 1935, which apply outside those Dominions, and to provide for other matters consequential on or connected with the setting up of those Dominions. The two independent Dominions to be set up in India were India and Pakistan. Section 18 thereof deals with provisions as to existing laws, etc. Sub-section (3) of Section 18 thereof is relevant and the same is extracted hereunder:

18 (3). Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

48.1. From a perusal of the above, what sub-section (3) of Section 18 provided was that the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

49. This provision came to be considered in the case of **Sir Gulab Singh v. District Magistrate of Dehradun**². That was a case where Sir Gulab Singh, ex-Maharaja of Rewa State, was placed under personal restraint at Dehradun by an order passed by

² 1950 Indian Law Reporter (ILR) All. 845 = AIR 1950 All. 11

the Governor General under the provisions of Bengal State Prisoners Regulation, 1818, as adapted by the Bengal State Prisoners Regulation (Adaptation Order), 1947. It may be mentioned that Rewa State had acceded to the Indian Union in August, 1947. Such restraint order was questioned in an application under Section 491 of the Code of Criminal Procedure, 1898.

49.1. The question which fell for consideration in that case was that whether Bengal State Prisoners Regulation (Adaptation Order), 1947 was *ultra vires* of the powers of the Governor General. It was in that context Acting Chief Justice Mr. Wali-Ullah J, referred to sub-section (3) of Section 18 and observed that Section 18 (3) had made it clear that the laws of British India existing immediately before 15th August, 1947, shall so far as applicable and with necessary adaptations continue as the law of each of the new Dominions until other provisions were made by the laws of the legislature of the Dominions concerned. Section 18 (3) provided for necessary adaptations in the law of British India existing prior to 15th August, 1947. It was laid down that the law of British India shall continue as the law of each of the new Dominions with

necessary adaptations. Noting that the word ‘adaptation’ as it occurred in the expression “the necessary adaptations” in subsection (3) of Section 18 was not defined in the Indian Independence Act, 1947, it was held that it should, therefore, be understood in the sense in which it is explained in the authoritative dictionaries of the English language. It was observed as under:

Some arguments have been addressed to us as regards the meaning of the word “adaptation” as it occurs in the expression “the necessary adaptations” in subsection (3) of Section 18 of the Independence Act. The word “adaptation” is not defined in Section 19 of the Act. It must, therefore, be understood in the sense in which it is explained in the authoritative dictionaries of the English language. According to *Websters Dictionary* Vol.1 the word “adaptation” carries with it the idea of modification for new uses or a change in form or structure. According to *Murray’s Dictionary*, Vol.1, the meaning to be assigned to “adaptation” is this: “Process of modifying a thing so as to suit new conditions.” According to the *Shorter Oxford English Dictionary*, one of the meanings assigned to the word “*adaptation*” is the process of modifying so as to suit new conditions.

49.2. Thus, it was clear that the expression ‘necessary adaptations’ appearing in Section 18(3) of the Indian Independence Act, 1947 intended alterations of the phraseology of an enactment in order to bring the said

enactment into accord with the changed constitutional position.

49.3. In his concurring judgment, Justice Saprú also examined Section 18 (3) of the Indian Independence Act. After referring to the dictionary meaning of the word 'adaptation', it was observed that from a perusal of the Indian (Adaptation of Existing Indian Laws) Order, 1947, the notion conveyed by the word 'adaptation' was that of rendering the existing law consistent with the provisions of the Indian Independence Act, 1947. Therefore, it was held that by the Adaptation Order, the law could be brought into conformity with the changed constitutional status and nothing more. In other words, only changes of form and not of substance in existing British Indian laws could be brought about by an adaptation order. Section 18(3) merely lays down what the position in regard to existing British Indian laws was to be. After threadbare analysis, it was held as follows:

I have pointed out that the word 'adaptation' connotes the idea of bringing the provisions of one Act into conformity or consonance with the changed constitutional position as visualized by the Indian Independence Act as defined by me before. Adaptation is not a merely ministerial Act. It is a legislative Act through the powers of

what might be called legislation included in the word “adaptation” are of limited character. By adaptation the Governor General could change the form but not the substance of any statute. He could not, for example, create an offence which did not exist before.

50. Applying the above analogy to G.O.Ms.No.68 dated 03.08.2015, the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014, can only be construed to mean application of Andhra Pradesh Medical Practitioners Registration Act, 1968, as amended as on 02.06.2014, to the new State of Telangana. Therefore, only such modification or amendment as may be necessary for alignment of the aforesaid Act to the State of Telangana would be permissible. The modification or amendment can only be of form and not of substance. For example, the name of the state can be substituted from the State of Andhra Pradesh to the State of Telangana, appearing either in the title of the Act or in the body of the Act and modification or amendment of like nature. However, what was sought to be amended by way of Para 4(3)(i) was substantial amendment to Section 3(2)(b) of the parent Act affecting the substance of the legislation. Substitution of the words “thirteen members” (sic) by the words “five members” would change the nature and character

of the Medical Council constituted under the Medical Practitioners Registration Act as adapted to the State of Telangana. From a dominant position, the elected members have now been made a minority block having lesser members than the members nominated by the government. The said exercise, in our view, could not have been carried out by way of an adaptation order. It is a legislative act for which legislation is necessary by way of an amendment by the State Legislature of Telangana. The same could not have been carried out by way of an executive order though in the form of an adaptation order.

51. In view of the above discussion, Para 4(3)(i) appearing in Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 as contained in G.O.Ms.No.68 dated 03.08.2015 cannot be sustained.

52. Insofar, G.O.Rt.No.15 dated 06.01.2016 is concerned, from a reading of the same it is seen that by the said order an Interim Telangana State Medical Council was constituted as a stop gap arrangement with the following members:

Section 3 (2) (c) 6 members:**Teaching staff of Medical Colleges:**

1. Dr. Raj Siddarth, Associate Professor of Surgery, Kakatiya Medical College, Warangal.
2. Dr. V. Rajalingam, Associate Professor of Ophthalmology, Sarojini Devi Eye Hospital, Hyderabad.

Registered Medical Practitioners:

1. Dr. G. Rama Krishna Reddy, Physician, H.No.3-5-1093, Venkateshwara Colony, Narayanaguda, Hyderabad.
2. Dr. E. Ravindra Reddy, Pediatrician, S.V.R. Hospital, Khaleelwadi, Nizamabad.
3. Dr. Ch. Jaganmohan Rao, Ophthalmologist, H.No.2-8-79, Flat No.404, Poulomi Towers, Mukarampura, Karimnagar.
4. Dr. B. Ramesh Kumar, Associate Professor of Gastroenterology, Osmania Medical College/Osmania General Hospital, Hyderabad.

Section 3 (2) (d) 4 members:

1. Director of Medical Education, TS, Hyderabad.
2. Director of Public Health and Family Welfare, TS, Hyderabad.
3. Commissioner, Telangana Vaidhya Vidhana Parishad, Hyderabad.
4. Vice-Chancellor, Kaloji Narayana Rao University of Health Sciences, Warangal.

52.1. It was further mentioned that the Interim Telangana State Medical Council shall carry out amongst others day-to-day activities of registration of doctors, conduct of continuing medical education programmes, disciplinary proceedings against doctors etc., as prescribed under the Medical Practitioners Registration Act.

53. We have already noticed that there is no provision in the Medical Practitioners Registration Act constituting Interim Medical Council. The only provision that can have a remote relevance is the proviso to sub-section (1) of Section 5 which says that for a period of two years from the date of the first constitution of the Medical Council, one of the *ex officio* members nominated by the government shall be the Chairman of the Medical Council. But this provision also cannot be stretched to justify constitution of Interim Medical Council. Even the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 does not provide for such Interim Medical Council. Even assuming that for the sake of administrative necessity, constitution of such Interim Medical Council became imperative, continuance thereof for more than six years cannot at all be justified. First of all, constitution of Interim Medical Council itself cannot be traced to any valid source of power. Secondly, even assuming such constitution to be a necessity, the same cannot continue for an indeterminate period. By its very nature and what has been mentioned in G.O.Rt.No.15 dated 06.01.2016, the Interim Medical Council is only a temporary measure; a stop gap

arrangement till the Medical Council is duly constituted in terms of Section 3(2) of the Telangana Medical Practitioners Registration Act, 1968. Therefore, continuation of G.O.Rt.No.15 dated 06.01.2016 has now become legally untenable.

54. We are aware of the immediate effect due to setting aside of G.O.Rt.No.15 dated 06.01.2016. The consequence would be that till the Medical Council is constituted in terms of Section 3(2) of the Medical Practitioners Registration Act, there would be no Medical Council in the *interregnum*. In other words, there would be a vacuum. For this duration, there will be no regulatory body of doctors in the State of Telangana for the purpose of registration, disciplinary action etc. In a situation such as this, the *doctrine of necessity* may have to be applied. In **Lalit Kumar Modi v. Board of Control for Cricket in India**³, Supreme Court has held that the *doctrine of necessity* is a common law doctrine and is applied to tide over situations where there are difficulties as law does not contemplate a vacuum. The *doctrine of necessity* is often invoked in cases of bias where there is no other authority or judge to decide the

³ (2011) 10 SCC 106

issue. However, as the law has evolved, the *doctrine of necessity* applies not only to judicial matters but also to quasi-judicial and administrative matters. Therefore, applying the aforesaid doctrine, the Interim Telangana State Medical Council may have to be allowed to function till the time the new Medical Council is constituted in terms of Section 3(2) of the Telangana Medical Practitioners Registration Act, 1968 and takes charge.

55. In the light of the above discussions, we, therefore, pass the following orders:

- (i) Para 4(3)(i) of the Andhra Pradesh Medical Practitioners Registration Act, 1968 (Telangana Adaptation) Order, 2014 as contained in G.O.Ms.No.68 dated 03.08.2015 is struck down as illegal as being beyond the scope and ambit of an adaptation order;
- (ii) The Interim Telangana State Medical Council constituted vide G.O.Rt.No.15 dated 06.01.2016 is legally untenable. However, for ensuring that there is no vacuum, the said Interim Telangana State Medical Council shall continue for a further period of three

months by which time elections and nominations to the Telangana State Medical Council shall be completed;

- (iii) Respondent No.1 shall take requisite steps including holding of elections and nomination of members in terms of sub-section (2) of Section 3 of the Telangana Medical Practitioners Registration Act, 1968 and complete the exercise within a period of three months from the date of receipt of a copy of this order;
- (iv) Once a new body takes charge, the Interim Telangana State Medical Council would stand disbanded.

56. Both the writ petitions are accordingly allowed. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

06.12.2022

Note: LR copy to be marked.

B/o.
Pln/gbs