

PETITIONER:
THIRUMURUGA KIRUPANANDA VARIYARTHAVATHIRU SUNDARA SWAMIGALME

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT: 12/02/1996

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
NANAVATI G.T. (J)

CITATION:
1996 SCC (3) 15 JT 1996 (2) 692
1996 SCALE (2)103

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.C. AGRAWAL, J. :

Special leave granted.

These appeals by Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust (hereinafter referred to as 'the Trust') relate to the establishment of a medical college at Salem in the State of Tamil Nadu. The Trust has been formed for establishing various educational institutions and for other charitable purposes. It has established a Pharmacy College, a Dental College, a Homoeopathy College, an Engineering College, a Polytechnic, an Industrial Training Institute, etc. in the town of Salem. It is desirous of establishing a medical college at Salem.

In 1987, the Tamil Nadu State Assembly enacted the Tamil Nadu Medical University Act, 1987 (Act No. 37 of 1987) which is now re-named as Dr. M.G.R. Medical University Act (hereinafter referred to as 'the Medical University Act') whereby Tamil Nadu Medical University, re-named as Dr. M.G.R. Medical University, (hereinafter referred to as 'the University') was established. Sub-section (5) of Section 5 of the Medical University Act empowers the University to affiliate colleges to the University as affiliated colleges, within the University area under conditions prescribed and withdraw such affiliation. On December 2, 1987, the Trust submitted an application to the University seeking affiliation to the University a medical college which the Trust wanted to start. The University, however, refused to entertain the said application of the Trust on the ground that a no objection certificate should be obtained from the Government of Tamil Nadu (hereinafter referred to as 'the State Government') for starting a medical college and without such a no objection certificate the application could not be considered. The Trust filed a Writ Petition (W.P. No. 2776 of 1989) in the Madras High Court against the

said order of the University refusing to entertain the application of the Trust for affiliation of the proposed medical college to the University. On the said Writ Petition, a learned single Judge (K. Venkataswamy J., as the learned Judge then was) passed an order, on April 13, 1989, with the consent of the parties, wherein it was recorded that the University would not insist on the prior permission of the Government and that the Trust would apply for affiliation in the prescribed form and the University would consider the same on merits without insisting upon prior permission of the State Government and pass orders in accordance with law. Thereafter, the Trust submitted an application for affiliation of the medical college on October 30, 1989. The said application was rejected by the University by order dated December 18, 1989 on the ground that the application ought to have been received on or before October 31, 1989 and it was received on November 7, 1989. The Trust filed another Writ Petition (W.P.No. 10453 of 1990) in the Madras High Court against the said order of the University dated December 18, 1989. The said Writ Petition of the as allowed by a learned single Judge of the High Court (Somasundram J.) by order dated February 1, 1991 and the order dated December 18, 1989 was set aside on the ground that application for affiliation has been sent by post on October 30, 1989 and the requirement of statute 37 with regard to the period of limitation for submitting the application was complied with. The University was directed to re-consider the said application of the Trust on merits. In the meanwhile, the Tamil Nadu State Legislature had enacted Dr. M.G.R, Medical University Tamil Nadu (Amendment and validation) Act, 1989 [XXXII of 1990] (hereinafter referred to as 'the State Act') on July 6, 1990. By the said Act, which was brought into force with effect from September 24, 1987, a proviso was inserted in sub-section (5) of Section 5 of the Medical University Act whereby it was prescribed that "no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, of such permission have been complied with". Similarly, a proviso was also inserted in sub-section (7) of Section 5 which prescribes that "no institution shall be approved by the University unless the permission of the Government to establish such institution has been obtained and the terms and conditions, if any, of such permission have been complied with".

After the decision of the High Court dated February 1, 1991, the University conducted a joint inspection and by order dated August 16, 1991 rejected the application for affiliation submitted by the Trust on the ground that there were certain deficiencies in the infrastructure that was made available for the medical college by the Trust. The Trust filed a third Writ Petition (W.P. No. 13392 of 1991) challenging the said order of the University dated August 6, 1991. The said Writ Petition was allowed by a learned single Judge (Bakthavatsalam J.) by judgment dated February 7, 1992 and the order dated August 16, 1991 was quashed and the matter was remitted back to the University for reconsideration. The learned Judge was of the view that while rejecting the application for affiliation the University had taken irrelevant and extraneous considerations into account. Feeling aggrieved by the said judgment of the learned single Judge, the State of Tamil Nadu filed an appeal (W.A. No. 301 of 1992) before a Division Bench of the High Court, The Trust also filed an appeal (W.A. No. 387 of 1992) against the said judgment of

the learned single Judge.

During the pendency of both these appeals, the President of India promulgated the Indian Medical Council (Amendment) Ordinance (Ordinance No. 13 of 1992) on August 27, 1992. The said Ordinance was subsequently replaced by the Indian Medical Council (Amendment) Act, 1993 [Central Act No. 31 of 1993] (hereinafter referred to as 'the Central Act') which was brought into force with effect from August 27, 1992. By the Central Act, Sections 10A, 10B and 10C were inserted in the Indian Medical Council Act, 1956. Section 10A deals with the establishment of a new medical college or opening of a new or higher course of study or training and prescribes that this can be done only with the previous permission of the Central Government obtained in accordance with the provisions of the said section.

In view of the said amendments, the Central Government was impleaded as a party in the Writ Appeals which were pending before the Division Bench of the High Court. The stand of the Central Government was that after the promulgation of Ordinance No. 13 of 1992, which was later on replaced by the Central Act, the Central legislation has occupied the entire field and the State legislation must be treated to have been rendered inoperative and, as a result, the approval of the State Government was no longer necessary for establishing a medical college as required under Proviso to sub-section (5) of Section 5 of the Medical University Act.

The Writ appeals filed by the State Government as well as by the Trust were disposed of by the High Court by the impugned judgment dated April 30, 1993 whereby Writ Appeal (W.A. No. 301 of 1992) filed by the State Government was allowed and the Writ Appeal (W.A. No. 387 of 1992) filed by the Trust was dismissed. The High Court held that the amendment introduced in clause (5) of Section 5 of the Medical University Act by the State Act was not, in any way, affected by the Central legislation and that even after insertion of Section 10A in the Indian Medical Council Act, 1956 prior permission of the State Government was required for establishing a medical college.

On July 18, 1993 when the special leave petitions filed by the Trust were placed before this Court, the following order was passed :-

"Issue notice on the Special leave Petitions; Prayer for interim relief is rejected.

Mr. P.R. Seetharaman, learned counsel, accepts notice on behalf of the respondents. In the mean time, it will be open to the petitioner to approach the Central Government and Indian Medical Council for necessary permission which shall be considered in accordance with law.

Liberty to mention for an early hearing."

Thereupon, the Trust submitted an application before the Medical Council of India (for short "Medical Council"). But the Medical Council by its letter dated December 15, 1993 informed the Trust that in order to enable the Medical Council to comply with the orders of this Court to consider the application of the Trust in accordance with law, the Trust should produce a letter of affiliation from the University. On January 21, 1994, this Court passed the following order :-

"In this case, having regard to the circumstance that the petitioners has had to go to various authorities where sanctions and permission are said to be necessary to obtain affiliation, it is necessary for the petitioner to know from which authority, sequentially, to commence with.

We direct the petitioner to apply to the State Government for the requisite permission. If the application in this behalf is filed within three weeks from today, the State Government will dispose of the same within four weeks thereafter. If the State Government declined the permission, they shall state the reasons for doing so. The petitioner need not have recourse to another petition to question the correctness of that decision. The order made by the State Government shall be placed before this Court in these proceedings.

Call this matter after six weeks."

In pursuance of the said directions given by this Court, the Trust moved the State Government for grant of permission and also submitted papers with regard to the acquisition of 150 acres of land by the Trust for the medical college and making of endowment deposit of Rs. 50 lakhs and appointment of teaching staff, non-teaching staff, professors, lecturers, etc. and purchase of equipment and providing other infrastructural facilities for the college. By order dated March 9, 1994, the State Government rejected the application of the Trust for the following reasons :

"(a) There are three Private Medical Colleges functioning in the Tamil Nadu for which permission was given by the Tamil Nadu Government on 24.7.1985 and that after that date the Government have not given permission to start Private Self financing Medical Colleges even though several private Self financing Private Organizations/Trust approached the Government for permission. This was mainly due to the reason that the Government of India are not in favour of starting new Medical Colleges either by the Government or by private agencies as the present annual turnover of Medical graduates every year is considered adequate to meet the requirements of the country.

(b) In February 1988, the Union Minister of Health and Family Welfare, Government of India in his D.O. letter referred to the recommendations of the Central Council of Health and Family

Welfare held in February 1988, that no Medical College should be allowed to be opened in any part of the country or no additions to the existing admission capacity in the Medical College should be permitted as the qualified Medical practitioners made available from the existing medical colleges were sufficient for the near future and that there has been reports of surplus of doctors all over the world by 2000 AD.

(c) The Government have decided not to accept the request of the petitioner Trust to recommend to Tamil Nadu Dr. M.G.R. Medical University to permit it to start the medical college because of the policy of the Government not to permit private organisations/Trusts to start self-financing Medical College in this State.

(d) In Tamil Nadu, there are 9 Government Medical Colleges and Four Medical Colleges under private management besides under Annamalai University, Chidambaram. The annual intake of students in the said colleges are 1477. The number of qualifying doctors seeking employment on the live registers of Employment Exchange in the State as on 28.2.1994 are 2412. For recruitment of Doctors for the post of Assistant Surgeon in Tamil Nadu Medical Service for the 1992, for 378 vacancies, 4,631 candidates applied for appointment, taking into account of these and other factors set out above, the Government consider that the existing Medical College in Tamil Nadu are more than sufficient and that there is no need for starting any more Medical Colleges in the State."

On January 27, 1995, this Court passed the following order :

"Pending decision on merit in the SLPs, after hearing Mr. K. Parasaran, learned senior counsel for the petitioner, Mr. R.K. Jain, learned senior counsel for the State of Tamil Nadu and Mr. Navin Prakash, learned counsel for the Medical Council of India, it is ordered :

On 15.2.1993, the Medical Council of India did write to the petitioner a letter of affiliation from the Dr. M.G.R. Medical University. Since the petitioner had not mentioned in their letter that they had applied to M.G.R.

Medical University for obtaining affiliation. If an expert body like that Medical Council of India certifies that the petitioner establishment conforms to the requirements of Medical Council of India, more than half the battle is won. Therefore, we would first like to have the opinion of the Medical Council of India. From this point of view, a direction shall issue to Medical Council of India to keep aside the question of affiliation from M.G.R. Medical University and the permission of Tamil Nadu Government and consider whether the infrastructure provided by the petitioner's establishment (Medical College) conforms to its norms and submit a report to this Court. It is open to the Medical Council of India to take the necessary inspection, if it so desires. In so deciding regard shall be had to its letter dated March 15, 1994, addressed to the Secretary to the petitioner's Trust.

The said report shall be submitted within six weeks from today. List the matter after eight weeks."

Consequent to the said order passed by this Court on January 27, 1995, the Medical Council conducted inspection of the college on March 8 and 9, 1995 to assess whether the infrastructure provided by the establishment (Medical College) conforms to the norms of the Medical Council. The Inspectors in their report have stated Inspectors in their report have stated that the Trust is having sufficient infrastructure for accommodation, equipment and staff component in pre-clinical departments for 100 students each year and have recommended that permission to start teaching may be granted. It appears that after the said inspection by the Medical Council, the Trust also approached the University for inspection of the institution and that on the basis of the said request, the University also conducted an inspection and it is stated that the report of the said inspection takes the view that the college is eligible for being affiliated to the University as it has satisfied all norms laid down by the University for being affiliated.

When the matter came before the Court, on August 30, 1995, the learned counsel for the Trust submitted that since the Trust has not obtained the necessary permission under Section 10A of the Central Act, the Trust would move for the said permission to the Central Government within two weeks and this Court directed that in case such an application was submitted, the Central Government shall consider the same in accordance with law without insisting upon the requirement of affiliation of the medical college with the University and shall pass order on the said application within two months after the filing of the application. In accordance with the said order, the Trust submitted an application dated September 13, 1995, before the Central Government and after considering the said application, the Government of India, Ministry of Health and

Family Welfare, have sent a Letter of Intent dated December 12, 1995 to the Trust wherein it is stated :

"2. The scheme submitted by the Secretary, Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust, Salem was referred to the Medical Council of India on the 17th October, 1995 for its recommendations. The Council had already appointed inspectors on the directions of the Hon'ble Supreme Court to inspect the infrastructural facilities available in the proposed medical college and the inspection was done in March, 1995. The Council recommended a Letter of intent may be given to the applicant to start a medical college for 100 admissions (A copy of the Inspection Report is enclosed).

3. After care consideration of the Scheme, inspection report, directions of the Hon'ble Supreme Court of India and recommendations of the Medical Council of India and factors mentioned in section 10A of the Indian Medical Council Act, 1956, this Ministry has come to the conclusion that a 'Letter of Intent' for starting a new medical college at Salem by Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust, Salem may be issued. Hence, this letter of Intent.

4. This letter of Intent is subject to the fulfillment of the following conditions:

(i) As per the Medical Council of India Notification No. MCI-34(41)/93-Med.(N) dated 90.9.93, an essentiality certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location is required to be obtained by the applicant from the State Government concerned. The applicant submits that the question of State Government permission is pending before the Supreme Court of India. This requirement of the State Government permission will be subject to the Supreme Court's directions.

(ii) Two performance bank guarantees one for a sum of Rs. 150 lakhs (for 100 admissions) for the establishment of the medical college and its infrastructural facilities and the second amount to

Rs. 550 lakhs (for 700 beds) for establishment of teaching hospital and its infrastructural facilities as per Medical Council of India norms may be provided.

(iii) A time-bound four years project completion report may be provided.

(iv) Consent of affiliation with a recognised university is not insisted upon in pursuance of the Hon'ble Supreme Court directions dated 30.8.95.

(v) The deficiencies in Inspection Report may be rectified.

5. Action to issue the grant of permission for admission to MBBS course will be taken on receipt of a letter accepting the conditions enumerated in para 4 abovementioned on verification of the latest staff position and infrastructural facilities by the Medical Council of India and after the bank guarantees are received in this Ministry."

After receiving the letter dated December 12, 1995, the Trust submitted a representation dated January 6, 1996, before the State Government for grant of essentiality certificate/no objection certificate for the establishment of medical college at Salem. The said request of the Trust has been rejected by letter dated January 10, 1996 sent by the Secretary, Health and Family Welfare Department, State of Tamil Nadu, wherein it is stated :

"In your representation dated 6.1.96, you have required the Government to grant Essentiality Certificate/No Objection Certificate to your Medical College at Salem. The Government have examined the request.

The Government have not changed the policy of not permitting any private Trust or Management to start a Medical/Dental College. I am therefore directed to state that the request to grant Essentiality Certificate/No Objection Certificate to start a Medical College at Salem is rejected."

From the aforesaid narration of facts, it would appear that after the insertion of Section 13A in the Central Act, the question regarding grant of permission for establishing medical college by the Trust was considered by the State Government twice during the pendency of these appeals. The matter was first considered by the State Government on the basis of the application submitted by the Trust in pursuance of the order dated January 21, 1994 passed by this Court and by their letter dated March 9, 1994, the State Government refused to grant the permission. Thereafter, the matter was considered by the Medical Council and the Central Government and on December 12, 1995, the Central Government issued a Letter of Intent which requires the fulfillment of the conditions mentioned therein. One of the conditions

mentioned in the said Letter of Intent is obtaining an essentiality certificate from the State Government regarding the desirability and feasibility of having the proposed medical college at the proposed location. The matter was considered by the State Government for the second time when a request was made by the Trust for issuing an essentiality certificate/no objection certificate as required by the Letter of Intent dated December 12, 1995 of the Central Government. The Said request was rejected by the State Government by letter dated January 10, 1996. The University has also conducted an inspection of the facilities available at the college proposed to be established by the Trust and appears to be satisfied about the college being eligible for being affiliated to the University.

Now the only impediment in the establishment of the medical college by the Trust is the stand of the State Government that permission cannot be given to a private trust to establish the medical college. This raises the question : what is the role of the State Government in the matter of establishment of a medical college? The State Government asserts its right on the basis of the proviso to sub-section (5) of Section 5 of the Medical University Act, inserted by the State Act, which prescribes that "no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions for such permission have been complied with". The said claim is disputed by the Trust on the ground that subsequent to the enactment of the State Act, Parliament has enacted the Central Act whereby Section 10A has been inserted in the Indian Medical Council Act, 1956 and the said provision deals with establishment of a new medical college or opening of a new or higher course of study or training and prescribes that notwithstanding anything contained in the Indian Medical Council Act, 1956 or any other law for the time being in force no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of the said Section. According to the Trust Section 10-A introduced by the Central Act would prevail over the proviso to Section 5(5) of the Medical University Act introduced by the State Act. It is, therefore, necessary to consider whether and, if so, to what extent the proviso to sub-section (5) of Section 5 of the Medical University Act is applicable in the matter of establishment of medical college in the State of Tamil Nadu. The answer to this question would depend on the scope and ambit of the legislative power of Parliament and the State Legislature in this field relating to establishment of a medical college, viz., education.

The legislative power in relation to 'education' was earlier distributed in all the three legislative lists in the Seventh Schedule to the Constitution. Parliament was conferred legislative power in respect of matters specified in Entries 63, 64, 65 and 66 of the List I (Union List) while the State Legislatures were conferred the power in respect of matters specified in Entry 11 of List II (State List) and Parliament and State Legislatures were conferred concurrent power in respect of matters specified in Entry 25 of List III (Concurrent List). By the Constitution (Forty Second Amendment) Act, 1976, Entry 11 of List II has been deleted and Entry 25 in List III has been enlarged to cover matters which were earlier specified in Entry 11 of List II. In view of the said amendment, the legislative power in respect of education is now conferred exclusively on Parliament in respect of matters specified in Entries 63 to

66 of List I and concurrently on Parliament and State Legislatures in respect of matters specified in Entry 25 of List III.

The State Act has undoubtedly been enacted in exercise of the power conferred by Entry 25 of List III. Shri Parasaran, the learned senior counsel appearing for the Trust, has also made his submissions on the basis that the Central Act has been enacted in exercise of the power conferred by Entry 25 of List III. Therefore, the legislative entry which is relevant for the purpose of the present case is Entry 25 of List III (as amended) which reads as under :

"25. Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

Since Parliament and State Legislatures are empowered to make laws on the same subject, the possibility of repugnancy between a law made by Parliament and a law made by a State Legislature under the said legislative entry cannot be excluded. Article 254 of the Constitution makes provision for dealing with such a situation. The said Article provides as under :

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of

the State."

Clause (1) of Article 254 gives overriding effect to the provisions of a law made by Parliament which Parliament is competent to enact or to any provision of any existing law in respect of one of the matters enumerated in List III and if a law made by the Legislature of the State is repugnant to the provisions of the law made by Parliament, the law made by the Legislature of the state is to be treated as void to the extent of repugnancy. Clause (1) is, however, subject to clause (2). Under clause (2), the law made by the Legislature of a State with respect to one of the matters enumerated in List III will prevail over the provisions of an earlier law made by Parliament or an existing law with respect to that matter if the law made by the Legislature of the State has been reserved for consideration by the President and has received his assent. The proviso to clause (2) curtails the ambit of clause (2) by providing that Parliament can enact a law with respect to the same matter on which the State Legislature has made the law and by such law the Parliament can add to, amend, vary or repeal the law made by the Legislature of a State. The provision corresponding to Article 254 was contained in Section 107 of the Government of India Act, 1935. The only difference between that provision and Article 254 is that there was no provision similar to the proviso to clause (2) of Article 254 in Section 107 of the Government of India Act, 1935. As a result of the proviso in Article 254, the legislative power of Parliament has been enlarged in the sense that it can add to, amend, vary or repeal the law made by the Legislature of the State.

Shri Parasaran has urged that proviso to sub section (5) of the Medical University Act, enacted by the State Act, is repugnant to Section 10A of the Indian Medical Council Act, enacted by the Central Act, and has to be treated as void by virtue of Article 254 of the Constitution since the Central Act was enacted after the enactment of the State Act, Shri G.L. Sanghi, the learned senior counsel appearing for the State of Tamil Nadu, has, however, submitted that since the State Act has received the assent of the President, it will prevail over the Central Act in view of clause (2) of Article 254 inasmuch as it has not been amended, varied or repealed by any subsequent law made by Parliament. Shri Sanghi has also contended that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10A of the Indian Medical Council Act because the requirement of both the provisions can be complied with for establishing a medical college.

We will first examine whether there is repugnancy between the proviso to Section 5(5) of the Medical University Act inserted by the State Act and Section 10A introduced in the Indian Medical Council Act, 1956 by the Central Act.

Explaining the meaning of repugnancy in the context of Section 107 of the Government of India Act, 1935, B.N. Rau J. has stated :

"It is sometimes said that two laws cannot be said to be properly repugnant unless there is a direct conflict between them, as when one said "do" and other "don't", There is no true repugnancy, according this view, if it is possible to obey both the laws. For reasons which we shall set forth presently, we think that this is

too narrow a test: there may well be cases of repugnancy where both laws say "don't" but in different ways. For example, one law may say, "No person shall sell liquor by retail, that is, in quantities of less than five gallons at a time" and another law may say, "No person shall sell liquor by retail, that is, in quantities of less than ten gallons at a time". Here, it is obviously possible to obey both laws, by obeying the more stringent of the two, namely the second one; yet it is equally obvious that the two laws are repugnant, for to the extent to which a citizen is compelled to obey one of them, the other, though not actually disobeyed, is nullified."

[See : G.P. Stewart V. B.K. Roy Chaudhury, AIR

1939 Cal. 628]

In Deep Chand v. The State of Uttar Pradesh & Ors., (1959) 2 Supp. SCR 8, this Court, while dealing with Article 254 of the Constitution, has held :

"Repugnancy between two statutes may thus be ascertained on the basis of the following three principles :

(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

(P. 43)

In State of Orissa v. M.A. Tulloch & Co., 1964 (4) SCR 461, it has been observed :

"Repugnancy arises when two enactments both within the competence of the two Legislatures collide and when the Constitution expressly or by necessary implication provides that the enactment of one Legislature has superiority over the other then to the extent of the repugnancy the one supersedes the other. But two enactments may be repugnant to each other even though obedience to each of them is possible without disobeying the other. The test of two legislations containing contradictory provisions is not, however, the only criterion of repugnancy, for if a competent legislature with a superior

efficiency expressly or impliedly evinces by its legislation an intention to cover the whole field, the enactments of the other legislature whether passed before or after would be overborne on the ground of repugnance."

[p.477]

It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficiency expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country.

Before we proceed to consider the ambit of the Central Act introducing Sections 10A, 10B and 10C in the Indian Medical Council Act, 1956, we may examine the field covered by the State Act which inserts the proviso in Section 5(5) of the Medical University Act. Shri Sanghi has submitted that the Medical University Act deals with the establishment of the university and recognition of medical colleges and the proviso which has been inserted in sub section (5) of Section 5 by the State Act is a provision relating to affiliation and recognition of medical colleges and this field is open for legislation by the State legislature. Shri Sanghi has placed reliance on the observations of this Court in J.P. Unni Krishnan & Ors. v. State of Andhra Pradesh & Ors., 1993 (1) SCC 645, that the right to establish an educational institution does not carry with it the right to recognition or the right to affiliation, as the case may be, and that it is open to the State or the University according affiliation and recognition to impose such conditions as they think appropriate in the interest of fairness, merit, maintenance of standards of education and so on. It is no doubt true that recognition or affiliation of an institution has to be distinguished from the establishment of an institution. Sub-Section (5) of Section 5 of the Medical University Act deals with the power of the Medical University relating to affiliation of colleges to the University and withdrawal of such affiliation. However, the proviso that has been introduced in sub-section (5) of Section 5 by the State Act imposes a condition that "no college shall be affiliated to the University unless the permission of the Government to establish such college has been obtained and the terms and conditions, if any, of such permission have been complied with". This would show that though Section 5(5) of the Medical University Act relates to affiliation of colleges the proviso inserted therein deals with the establishment of a college and imposes a condition that for the purpose of affiliation of a college permission of the State Government to establish the college is necessary. In other words, the said proviso that has been inserted by the State Act, in pith and substance, is a provision relating to the establishment of a college and merely because it is placed in a provision relating to affiliation of colleges to the

University the said proviso would not cease to be a provision dealing with establishment of a college.

We may now come to Section 10A inserted in the Indian Medical Council Act, 1956 by the Central Act which provides as follows :

"10-A. Permission for establishment of new medical college new course of study, etc. - (i)

Notwithstanding anything contained in this Act or any other law for the time being in force,

a) no person shall establish a medical college; or

b) no medical college shall

i) open a new or higher course of study or training (including a post graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or

ii) increase its admission capacity in any course of study or training (including a post graduate course of study or training).

Except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1. - For the purpose of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2. - For the purpose of this section, "admission capacity" in relation to any course of study or training (including a post graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

2) (a) (i) Every person or Medical college shall, for the purpose of obtaining permission under sub-Section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer this scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

3) On receipt of a scheme by the Council under sub-Section (2), the Council may obtain such other particulars as may be considered

necessary by it from the person or the medical college concerned, and thereafter, it may :

(a) If the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) Consider the scheme, having regard to the factors referred to in sub-Section (7), and submit the scheme together with its recommendations thereon to the Central Government.

4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-Section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-Section (7), either approve (with such condition, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-Section (1) :

Provided that no scheme shall be disapproved by the Central Government except after giving the person of college concerned a reasonable opportunity of being heard :

Provided further that nothing in this sub-Section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme as if such scheme has been submitted for the first time under sub-Section (2).

5) Where within a period of one year from the date of submission of the scheme of the Central Government under sub-Section (2) no order passed by the Central Government has been communicated to the person or college submitted the scheme such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted and accordingly the permission of the Central Government required under sub-Section (1) shall also be

deemed to have been granted.

6) In computing the time-limit specified in sub-Section (5) the time taken by the person or college concerned submitting the scheme in furnishing any particulars called for by the Council or by the Central Government shall be excluded.

7) The Council while making its recommendations under clause (b) of sub-Section (3) and the Central Government while passing an order either approving or disapproving the scheme under sub-Section (4) shall have due regard to the following factors, namely ;

a) Whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training would be in a position to offer the minimum standard of medical education as prescribed by the Council under Section 19A or as the case may be under Section 20 in the case of post-graduate medication education;

(b) Whether the person seeking to establish medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) Whether necessary facilities in respect of staff equipment accommodation and other facilities to ensure proper functioning to the medical college or conducting the new course of study or training or accommodating the increased admission capacity have been provided or would be provided within the time limit specified in the scheme;

(d) Whether adequate hospital facilities having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity have been provided or would be provided with the time limit specified in the scheme;

(e) Whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognized qualifications;

(f) the requirement of manpower in the field of practice

of medicine; and

(g) any other factors as may be prescribed.

8) Where the Central Government passes an order either approving or disapproving a scheme under this Section a copy of the order shall be communicated to the person or college concerned."

According to the Statement of Objects and Reasons appended to the Bill, the object underlying the enactment of Section 10A is to curb the mushroom growth of medical colleges in the country. In the Statement of Objects and Reasons it is stated :

"..... it had been noticed that some State Governments were giving approval for the opening of new medical colleges on their own, without insisting on the provision of basic pre requisites of hospital, equipment, laboratories or qualified faculty members etc. in certain cases, after the college gave admission to students they began exercising combined pressure on the government for grant of approval to the medical colleges by the Medical Council of India.

In order to curb such mushroom growth of medical colleges, the President promulgated an Ordinance on the 27th August, 1992 to amend the Indian Medical Council Act, 1956 by incorporating therein provisions for prior permission of the Central Government for establishing any new medical college and for starting any new or higher course of study in an existing medical college or increasing admissions capacity in any course of study of training including post-graduate course of study.

The Bill seeks to replace the aforesaid Ordinance."

Section 10A seeks to achieve this object by prescribing in sub-Section (1) that no person shall establish a medical college except with the previous permission of the Central Government obtained in accordance with the provisions of said section. Similar permission is required for obtaining a new or higher course of study or training or for increase in the admission capacity in any course of study or training in a medical college. Sub-section (2) of Section 10A requires that every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in the prescribed form and the said scheme is to be referred to the Medical Council for its recommendations. Under sub-section (3), the scheme is required to be considered by the Medical Council having regard to the factors referred to in sub-section (7) and Medical Council submits the scheme together with its recommendations thereon to the Central Government. Sub section (4) empowers the Central Government, after

considering the scheme and the recommendations of the Medical Council and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), to either approve, with such condition, if any, as it may consider necessary, or disapprove the scheme and any such approval shall be a permission under sub-section (1). Under subsection (5) the scheme shall be deemed have been approved by the Central Government in the form in which it had been submitted and the permission of the Central government required under sub-section (1) shall be deemed to have been granted where no order passed by the Central Government has been communicated to the person or college within one year from the date of submission of the scheme to the Central Government under sub-section (2). The factors that are required to be taken into consideration by the Medical Council and the Central Government under sub-section (7) include the capacity to offer the minimum standard of medical education as prescribed by the Central Government, adequacy of financial resources, necessary facilities in respect of staff equipment accommodation training and other facilities to ensure proper functioning to the medical college, adequate hospital facilities, arrangement\programme to impart proper training to students and the requirement of manpower in the field of practice of medicine.

It would thus appear that in Section 10A Parliament has made a complete and exhaustive provision covering the entire field for establishing of new medical colleges in the country. No further scope is left for the operation of the State legislation in the said field which is fully covered by the law made by Parliament. Applying the tests said down by this Court, it must be held that the proviso to sub-section (5) of Section 5 of the Medical University Act which was inserted by the State Act requiring prior permission of the State Government for establishing a college are repugnant to Section 10A inserted in the Indian Medical Council Act, 1956 by the Central Act which prescribes the conditions for establishing a new medical college in the country. The said repugnancy is, however, confined to the field covered by Section 10-A, viz., establishment of a new medical college and would not extend to establishment of other colleges.

The fact that the State Act has received the assent of the President would be of no avail because the repugnancy is with the Central Act which was enacted by Parliament after the enactment of the State Act. In view of the proviso to sub-Article (2) of Article 254 Parliament could add to, amend, vary or repeal the State Act. In exercise of this power Parliament could repeal the State Act either expressly or by implication. (See : Zaverbhai Amaldas v. The State of Bombay, (1955) 1 SCR 799, 809, Deep Chand v. State of U.P. [supra] at p. 51). Although the Central does not expressly amend or repeal the State Act but the effect of the non-obstante clause in sub-Section (1) of Section 10A which gives overriding effect to the provisions of Section 10A over anything contained in the Indian Medical Council Act, 1956 or any other law for the time being in force, is to render inapplicable, and thereby repeal impliedly, the proviso inserted in sub-section (5) of Section 5 of the Medical University Act in the matter of establishment of a new medical college in the State of Tamil Nadu and its affiliation by the Medical University. In other words, as a result of insertion of Section 10A in the Indian Medical Council Act, 1956 by the Central Act, with effect from

August 27, 1992, the proviso to Section 5(5) of the Medical University Act has ceased to apply in the matter of establishment of a medical college in the State of Tamil Nadu and its affiliation to the Medical University and for the purpose of establishing a medical college permission of the Central Government has to be obtained in accordance with the provisions of Section 10A. If such a permission is granted by the Central Government a further permission of the State Government under the proviso to Section 5(5) of the Medical University Act would not be required for the purpose of obtaining affiliation of such a college to the Medical University.

After the enactment of Section 10a by the Central Government the Medical Council, by notification dated September 20, 1993, has made the 'Establishment of new Medical Colleges, opening of higher courses of study and increase of admission capacity in medical colleges Regulations, 1993' (hereinafter referred to as 'the Regulations') whereby a scheme for application for permission of the Central Government to establish a new medical college has been made. In the said scheme qualifying criteria for applying for permission to establish a new medical college have been laid down. One of the conditions that is required to be fulfilled by the eligible organizations is "that Essentiality Certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration". Shri Sanghi has urged that even if the proviso to Section 5(5) of the Medical University Act is held to be inapplicable in the matter of establishing a new medical college and the requirement of obtaining the prior permission of the State Government for establishment of a medical college cannot be insisted upon under the said proviso, a similar requirement has now been imposed by virtue of the qualifying criteria laid down in the scheme as framed by the Regulations and that this was also insisted upon by the Central Government in its Letter of Intent dated December 12, 1995. The submission of Shri Sanghi is that the State of Tamil Nadu has considered the matter in the light of this requirement and has refused the necessary permission.

It is no doubt true that in the scheme that has been prescribed under the Regulations relating to establishment of new medical colleges one of the conditions for the qualifying criteria laid down is that essentiality certificate regarding desirability and feasibility of having the proposed college at the proposed location should be obtained from the State Government. The said condition about obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed college at the proposed location cannot be equated with obtaining prior permission of the State Government for establishing a new medical college as required under the proviso to Section 5(5) of the Medical University Act, for the purpose of granting the essentiality certificate as required under the qualifying criteria prescribed under the scheme, the State Government is only required to consider the desirability and feasibility of having the proposed medical college at the proposed location. The essentiality certificate cannot be withheld by the State Government on any policy consideration because the policy in the matter of establishment of a new medical

college now rests with the Central Government alone.

As indicated earlier, the Trust did approach the State of Tamil Nadu for grant of essentiality certificate in terms of Letter of Intent dated December 12, 1995 issued by the Government of India, but the State Government has refused to issue the said certificate by its order dated January 10, 1996. The only reason which has been given by the State Government for such refusal is that "the Government have not changed the policy of not permitting any private Trust or Management to start a Medical/Dental College". This would show that instead of considering the matter of grant of essentiality certificate on the basis of desirability and feasibility of having the proposed medical college at the proposed location, the State Government has refused to grant the essentiality certificate on the basis of its earlier policy of not permitting any private Trust or Management to start a Medical/Dental College in the State. The State Government could not refuse essentiality certificate on such a policy consideration. The refusal on the part of the State Government to grant the essentiality certificate in respect of the medical college proposed to be established by the Trust cannot, therefore, be upheld.

The question that arises is whether the State Government should again be directed to consider the matter of grant of essentiality certificate. On a careful consideration of the matter, we are of the opinion that since the Trust has already established the infrastructure for establishing a medical college and the reports of the inspection conducted by the Medical Council as well as by the University indicate that the facilities that are available are adequate for starting a medical college, it would serve no useful purpose to insist upon obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location. We are therefore, of the view that the matter of grant of permission for establishing a new medical college by the Trust should be considered by the Central Government without insisting upon the condition regarding obtaining an essentiality certificate from the State Government regarding desirability and feasibility of having the proposed medical college at the proposed location.

The appeals are, therefore, allowed, the impugned judgment of the High Court is set aside and the Central Government is directed to consider the application submitted by the Trust for grant of permission to establish a new medical college in accordance with the provisions of Section 10A of the Indian Medical Council Act, 1956 without insisting upon the Trust to comply with condition regarding obtaining essentiality certificate from the State Government. The Central Government shall consider and pass an order in this regard within a period of one month. In the event of permission being granted by the Central Government for the establishment of the medical college by the Trust the Medical University shall consider the application of the Trust for affiliation of the said medical college to the Medical University without insisting upon the requirement of obtaining prior permission of the State Government for establishing the medical college. The appeals are disposed of accordingly. No orders as to costs.