

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.2.2006

Coram

THE HONOURABLE MR. A.P.SHAH, THE CHIEF JUSTICE

and

THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Petition Nos.3951, 4796 and 4826 of 2006

Minor Nishanth Ramesh  
rep. by Mother/Natural Guardian ... Petitioner in  
Mrs. Sandhya Ramesh W.P.No.3951 of 2006

Minor Nikita Gandhi  
rep. by Father/Natural Guardian ... Petitioner in  
Mr.Jayaprakash Gandhi W.P.No.4796 of 2006

Joshua Dhivyan, G.(Minor)  
rep. by his Father ... Petitioner in  
Rev.E.C.Gnana Sekhar W.P.No.4826 of 2006

Vs.

The State of Tamil Nadu  
rep. by its Secretary to Govt.  
Education Department, ... 1st Respondent in  
Fort St. George, Chennai-9. W.P.No.3951 of 2006 and  
4826/06 and Respondent  
in WP NO. 4796/06

The Selection Committee  
rep. by its Chairman,  
Directorate of Medical Education,  
Kilpauk, Chennai-600 010.

The Director,  
Directorate of Medical Education,  
Kilpauk,  
Chennai-600 025.

.. RR 2 and 3 in  
W.P.No.4826 of 2006.

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Pattali Makkal Katchi (PMK)  
Students Wing,  
Rep. by its State Secretary,  
K.Saravanan. .. R2 in W.P.No.3951/06  
(impleaded vide order dt.27.2.06  
by Hon'ble CJ & PSDJ in  
W.P.M.P.No.5314/06)

For petitioners :: Mr.K.M.Vijayan, S.C. For  
Mr.R.Suresh Kumar  
Mrs.Nalini Chidambaram, SC for  
Ms.Gladys Daniel

For respondents :: Mr.Mukul Rohati, S.C. and  
Mr.N.R.Chandran, A.G. and  
Mr.A.L.Somayaji, Addl.A.G.  
Assisted by Mr.V.Karthikeyan, AGP  
Mr.R.Thiagarajan, SC for Mr.K.Balu  
for impleaded respondent

Petitions under Article 226 of the Constitution of India, praying that in the circumstances stated therein and in the respective affidavits filed therewith, the High Court will be pleased to issue writs of

1. Declaration

a. Declaring the Tamil Nadu Regulation of Admission in profession Courses Act, 2006 (Tamil Nadu Act 2 of 2006) as illegal unconstitutional and without legislative competence violating the Judgment of the Apex Court and the High Court of Madras holding the conduct of common Entrance Test is essential and cannot be dispensed with, consequently directing the respondents to conduct common Entrance Test for admission to all professional courses in the State of Tamilnadu for the academic year 2006-2007 (W.P.3951/06 )and

b. declaring the Tamilnadu Regulation of Admission in professional Courses Act 2006 as unconstitutional arbitrary and violative of Article 14 of the Constitution of India (W.P. No. 4826/06)

II. Mandamus for hearing the respondent herein from in any manner dispensing with the common entrance test for admission to professional Courses for the Academic Year 2006-2007 against the Judgment of this Court and the Apex Court (W.P.No.4796/06) respectively.

## ORDER

(Order of the Court was made by  
The Honourable The Chief Justice)

These writ petitions raise a short but an important question as to the constitutional validity of the Tamil Nadu Regulation of Admission in Professional Courses Act 2006 (Tamil Nadu Act 2 of 2006), hereinafter for brevity's sake called the "Act". Since common questions of law and fact are involved, we have heard all the cases together and disposing them of by this judgment.

2. In W.P.No.3951 of 2006, Minor Nishanth Ramesh vs. State of Tamil Nadu (which we are treating as the lead case), the petitioner is a Plus two student of Vidya Mandhir School, affiliated to Central Board of Secondary Education (C.B.S.E.), Chennai. The Tamil Nadu State Board, I.S.C. and C.B.S.C. are the three Boards which offer Plus two course in the State of Tamil Nadu.

3. It has been alleged that ever since 1984, the admission to the professional colleges in the State of Tamil Nadu was governed by G.O.Ms.No.657, dated 29.5.1984. The said Government Order prescribed admission to the professional college on the basis of qualifying examination (Plus two) and Common Entrance Test on the basis of the State Board Syllabus for all the Board students. The inter se merit for admission to the professional college on the basis of 200 marks for qualifying exam and 100 marks for Common Entrance Test in total 300 marks, was taken in common for all the Board students. In the year 2005, by G.O.Ms.No.184, the State Government abolished Common Entrance Test for admission to professional colleges. That was successfully challenged by a student N.Priyadharshini. A Division Bench of this Court was pleased to strike down the said G.O. in a reported judgment in Priyadharshini N. vs. The State of Tamil Nadu represented by its Secretary to Government, Education Department, Chennai (2005 (3) CTC 449).

4. It has been further alleged that the State of Tamil Nadu by Act 2 of 2006 has passed a legislation which on the one hand dispensing with Common Entrance Test to State Board students, introduced Common Entrance Test for the other Board students alone as eligibility test for admission to professional colleges in the State of Tamil Nadu. The Act thus seeks to scrap the Common Entrance Test for State Board students while making it mandatory for students of other Boards. This is a blatant discrimination against the students studying in non-State Board when compared to State Board students. The State Board students are at an advantageous position as they are exempted from

writing the Common Entrance Test, whereas the students from other Boards are required to write Common Entrance Test. The provisions of the Act are thus discriminatory, arbitrary and violative of Article 14 of the Constitution.

5. It is alleged that in the matters relating to admission, the State cannot follow a procedure which is inconsistent with the procedure prescribed by the Medical Council of India Regulations and the All India Council for Technical Education Regulations. The subject relating to determination of standards in institutions for higher education or research and scientific and technical institutions falls under Entry 66 of List I of the Seventh Schedule and the State legislature has no legislative competence to enact the present law determining the procedure for admission to professional courses. To that extent, the Act is ultra vires the Regulations of MCI and AICTE which have an overriding power under the scheme of the Constitution. It is alleged that the Act in the present form constitutionally violates the MCI and AICTE Regulations and orders of the Supreme Court governing admission to professional courses.

6. In the light of the challenge raised by the petitioners, we may now examine the provisions of Tamil Nadu Act 2 of 2006. The preamble of the Act states that it has been enacted to regulate admission to professional degree courses such as engineering, medicine, dental, agriculture and other incidental and ancillary courses thereto. Sections 2(b), 2(d), 2(h), and 2(n) define "Arrival of eligibility marks", Common Entrance Test", "Cut-off marks" and "Qualifying eligibility" respectively as follows:

"Section -2: In this Act, unless the context otherwise requires;-

(b) "Arrival of eligibility marks" means the comparison of the marks of students who have passed, qualified and obtained eligible cut-off marks as prescribed by the Authorities of the respective institutions or Universities who decide it as marks for admission based on the marks of the students who have passed the Higher Secondary Board Examinations conducted by the Department of Education, Government of Tamil Nadu and the marks of such of those students who have obtained such eligibility criteria marks wholly through the Common Entrance Test which are conducted only to those students who are drawn from disciplines other than curriculum offered by the Board of Higher



Secondary School Examinations of the Government of Tamil Nadu;

(d) "Common Entrance Test" means an Entrance Test in the Common Entrance Test Syllabus, conducted by the State Government or an University or an Authority or an agency authorized by the Government of Tamil Nadu for the purpose of admission to a professional course so as to arrive at an equation or standardization of only to those students of different styles or patterns of School final Examinations or curriculums such as Central Board of Secondary Education so as to compare the eligibility criteria for Professional Course with that of students who have qualified by passing through the Tamil Nadu State Board Examinations conducted at the Higher Secondary (Plus two) level;

(h) "Cut-off marks" means the highest marks prescribed by the respective authorities in whichever discipline it may be or whichever Bachelor Degree Course it may be and the same shall be based upon the marks valued and obtained in the Higher Secondary School Leaving Certificate Course conducted by the Board of Secondary Examinations, Government of Tamil Nadu, at the Higher Secondary (Plus two) level, and the equivalent marks obtained in the Common Entrance Test by other students namely, Central Board of Secondary Education or Indian School Leaving Certificate Course or any other State Board of any other State or any other School final (twelfth standard) qualifying certificate.

Explanation:- The students who hold the Higher Secondary School Leaving Certificate after successfully completing the examinations conducted by the Board of Higher Secondary School Examinations so authorized by the State Board at the Higher Secondary School level (Plus two) need not undergo the Common Entrance Test since the cut-off marks are to be fixed only on the basis of the marks obtained in the examinations conducted by the Board of Secondary Examinations at the Higher Secondary (Plus two) level, Government of Tamil Nadu;

(n) "Qualifying Eligibility" means the students who possess the eligible marks for admission by passing the Higher Secondary Examination conducted by the Board of Higher Secondary Examinations in Higher Secondary (Plus two) level in Tamil Nadu conducted under the Department of Education, Government of Tamil Nadu.

7. Section 3 provides that the marks obtained in the qualifying examination conducted by the State Board at the twelfth standard (Plus two) level to its students shall be the basic marks for admission. The students of other disciplines or Boards or streams will have to take a Common Entrance Test which is of the same syllabus as the State Board plus two level, and the State Board students are not required to take this test. Section 5 provides for evaluation of students of various other Boards with State Board students. It reads as under:-

"The equation of students who have qualified through various Boards or various streams from which the students are drawn shall be done only after they undergo the Common Entrance Test based on the syllabus of the State Board and the marks obtained in such a Test shall be equated with the marks obtained by the students in the plus two examination of the State Board conducted by the Board of Higher Secondary Examinations of the Government of Tamil Nadu."

8. Section 6 provides that Common Entrance Test shall not be applicable to State Board Students and the marks obtained by them shall be the base cut-off marks to which the students of other disciplines as enumerated in the Act shall qualify through the Common Entrance Test. Section 7 provides that the admission criteria for all kinds of students shall be on the cut-off marks equated by treating the marks obtained on the syllabus of State curriculum prescribed by the Board of Higher Secondary Education, Government of Tamil Nadu as the basis for admission. Section 8 makes the provisions of Section 4 of the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments of posts in the Service under the State) Act, 1993 (Tamil Nadu Act 45 of 1994) applicable to the admission for the professional courses. Section 10 confers on the State Government power to make rules for carrying out the purposes of the Act.

9. In exercise of the powers conferred by the Act, the State Government has framed the Tamil Nadu Regulation of Admission in Professional Courses Rules, 2006. Rule 2(ii)

defines "Students of Boards other than State Board" to mean the students who have taken school curriculum either by means of Central Board of Secondary Education or Indian School Leaving Certificate Course or any other Board other than the State Board in Tamil Nadu or any other school qualifying certificate which is treated to be equivalent to the Board of Secondary Examinations in Higher Secondary Course conducted by the State Board in Tamil Nadu. Rule 4 provides that a "Common Merit List" will be prepared by computing the aggregate marks obtained by the students, in the related subjects (theory and practical mentioned in the prospectus), in the twelfth standard (Plus two) examination conducted by the State Board and by computing the aggregate marks obtained by the students, other than the State Board, who appeared for the qualifying examination, in the Common Entrance Test (theory and practical mentioned in the prospectus), based on the State Board syllabus in the appropriate ratio. Rule 7 contemplates "voluntary sharing of seats by unaided professional colleges" and for that unaided professional colleges may voluntarily give, in writing their consent to the Government or to the Director of Government Examinations, Government of Tamil Nadu or to the authority or authorities specified in Rule 6. While, doing so, they shall intimate clearly the number of seats they will be surrendering to the Government of Tamil Nadu for making admission through its Single Window System by following the rule of reservation as provided in the Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of seats in Educational Institutions and of appointments of posts in the services under the State) Act, 1993 (Tamil Nadu Act 45 of 1994).

10. The aforesaid provisions of the Act including its preamble make it abundantly clear that the sole object of the Act is to abolish Common Entrance Test for the students of State Board while making it mandatory for the students of other Boards. Section 3 of the Act expressly provides that as far as State Board students are concerned the marks obtained in the qualifying examination conducted by the State Board i.e., twelfth standard (Plus two) level examination shall be the basis for admission. Whereas the students of other disciplines or Boards or streams will take a Common Entrance Test which is of the same syllabus as that of the State Board (Plus two) level. This position is further made clear by Section 4 which states that the Common Entrance Test is meant only to those students who have not studied under the State Board syllabus meant for Higher Secondary Examination conducted by the Tamil Nadu State Board. Thus, the students of the other Boards who have passed the Higher Secondary Examinations conducted by the respective Boards will not be eligible for admission to professional courses unless they write a Common Entrance Test. Section 5 provides that the equation of students who



have qualified through other Boards or streams shall be done only after they undergo the Common Entrance Test based on the syllabus of the State Board and the marks obtained in such a Test shall be equated with the marks obtained by the students in the Plus two examination of the State Board conducted by the Tamil Nadu State Board. Section 7 then states that the admission criteria for all kinds of students shall be on the cut-off marks equated by treating the marks obtained on the syllabus of State Curriculum prescribed by the State Board. It is pertinent to note that though section 8 read with Section 2(k) makes the provisions of Section 4 of the Tamil Nadu Act 45 of 1994 applicable to the admission to all professional courses, Rule 4 of the Rules specifically provides that there will be only seat-sharing arrangement in unaided professional colleges and no reservation will be provided in the unaided colleges under Tamil Nadu Act 45 of 1994. During the course of hearing it was also clarified on behalf of the State Government that the reservations will not apply to minority institutions.

11. The question that falls for consideration is whether the State enactment falls within Entry 66 List I or Entry 25 List III - Concurrent List of the Seventh Schedule to the Constitution. The second question is assuming that the enactment falls under Entry 25 List III whether it is violative of right of equality guaranteed under Article 14 of the Constitution.

12. We may now examine the provisions of the relevant Central Laws. In exercise of power under Indian Medical Council Act, 1956 the Central Government has framed Regulations on Graduate Medical Education, 1997. The relevant part of the Regulations on Graduate Medical Education, 1997 reads as follows:-

"MEDICAL COUNCIL OF INDIA  
SALIENT FEATURES OF REGULATIONS ON GRADUATE  
MEDICAL EDUCATION, 1997

PUBLISHED IN PART III, SECTION 4  
OF THE GAZETTE OF INDIA DATED 17TH MAY 1997

1. Short Title and commencement:- (1) These regulations may be called the "Regulations on Graduate Medical Education, 1997".

(2) They shall come into force on the date of their publication in the Official Gazette.



## Admission, Selection, Migration and Training

Admission to the Medical Course - Eligibility Criteria : No candidates shall be allowed to be admitted to the Medical Curriculum of first Bachelor of Medicine and Bachelor of Surgery (MBBS) Course until:

1. He/She shall complete the age of 17 years on or before 31<sup>st</sup> December, of the year admission to the MBBS course.

2. He/She has passed qualifying examination as under:

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than core course of English is prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

(b) .....

(c) .....

### Selection

The selection of students to medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country:

1. In states, having only one Medical College and one University board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.

2. In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance

examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies:

3. Where there are more than college in a State and only one University/Board conducting the qualifying examination, then a joint selection board be constituted for all the colleges.

4. A competitive entrance examination is absolutely necessary in the cases of Institution of All India character."

13. So far as admissions to engineering colleges are concerned, there are AICTE Regulations similar to the Medical Council Regulations. In exercise of powers conferred by Section 23(1) of the All India Council for Technical Education Act, 1987 the All India Council for Technical Education has prescribed the following guidelines for admission to students in Engineering and Diploma courses pursuant to Section 2(o) of the said Act, which states that the Council may:

"Provide guidelines for admission to students to technical institutions and Universities imparting technical education."

Guideline No.3 of the aforesaid Guidelines states:

"Entrance tests.- All States/Union Territories (Uts) should conduct entrance tests in the subjects of Physics, Chemistry and Mathematics at 12+ level. The entrance test should be common to all engineering degree institutions in the State/UT. The minimum marks for eligibility for the entrance test need not be prescribed in the case of degree courses and all students who have passed the qualifying examination may be permitted to appear in the entrance test. Only the merit ranking in the entrance test should be the basis for admission to engineering degree programmes. Such test should be conducted by appropriate agencies set up for the purpose."

In addition to the above, Regulation 7 of the A.I.C.T.E. Regulations states:

" A common merit list in accordance with the provisions of sub-regulation (5) shall be prepared from amongst all the candidates provided that in States where no such entrance examination shall be held for admissions to be made from the academic year 1995."

14. Similar provision is also there with regard to Dental Colleges vide Dental Council of India B.D.S.Course Regulation, 1996 which states:

"Selection of Students.-

(a) The selection of students to a Dental College should be based solely on merit of the candidate and for determining the merit the marks obtained at the qualifying examination conducted by the Board/Examining body conducting such examination, be taken into consideration exception being MBBS degree holders.

(b) In States, having more than one University/Board/Examining Body conducting the qualifying examination (or where there are more than one Dental College under the administrative/control of one authority) a competitive entrance examination may be held so as to achieve a uniform evaluation due to variation of the standard of qualifying examinations conducted by different agencies.

(c) A competitive entrance examination is absolutely necessary in the case of Institutions of all India character."

15. The 1997 Regulation (quoted above) makes it clear that in States having only one Medical College and one University board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration for granting admissions in M.B.B.S. Course. However, in States having more than one university/board/examining body, an entrance examination is mandatory. This is because, as pointed out by several judgments of the Supreme Court, different examining bodies have different standards of marking, different syllabus etc. and hence a student who appears for the examination conducted by an examining body which is stringent in granting marks will be discriminated vis-a-vis



a student who appears for the examination conducted by an examining body which is liberal in granting marks. This will be violative of Article 14 of the Constitution as held in the said decisions. The 1997 Regulation has statutory force as under Section 33 of the Indian Medical Council Act, 1956 it will amount to delegated legislation. In *Andhra Bank Vs. B.Sathyanarayanan*, 2004 (2) SCC 657 (vide para-10) it was held by the Supreme Court that a valid regulation once framed would be part of the statute. Similarly, in *St. Johns Teachers Training Institute Vs. Regional Director*, 2003 (3) SCC 321 the Supreme Court observed (SCC page 332):-

"Regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See *Sukhdev Singh Vs. Bhagatram Sardar Singh Raghuvanshi*, AIR 1975 SC 1331.)"

In the instant case, it is not disputed by the respondents that the regulations in question have been validly made under the power conferred by the statute, and hence, they have to be treated as part of the relevant statute itself.

16. The submission of Mr.K.M.Vijayan and Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioners is that the State Legislature is not competent to legislate on the matter relating to eligibility and selection for admission to professional courses, which is governed by the Central Legislation under Entry - 66 of List - I of the Constitution of India like MCI Act, AICTE Act, etc. The Common Entrance Test is mandatory in the State of Tamil Nadu since there are several examining Boards in the State. In the legislative field exclusively given to the Parliament under Entry - 66 of List - I of the Constitution the State has no competence to pass any legislation under Entry - 25 of List III of the Constitution. For proper consideration of the submission, we may set out these two entries:-

Entry 66 List I:

Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

Entry 25 List III:

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.

17. Till January 3, 1977, education was a State subject under Entry 11 in List II. By the Forty-second Amendment Act 1976, Entry 11 was deleted and it was placed in the Concurrent List by enlarging the Entry 25, as set out above. The interplay between various entries in this regard in the three lists of the Seventh Schedule and the real import of Entry - 66 of List - I have been examined in several decisions of the Supreme Court. In *Gujarat University Vs. Krishna Ranganath Mudholkar*, AIR 1963 SC 703 a decision by a Constitution Bench rendered prior to the Forty-second Amendment when Entry 11 of List II was in existence, it was held that Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in Parliament. The use of the expression "subject to" in Item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In paragraph -23, the Court held as under:

"Power of the State to legislate in respect of education including universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If such a legislation is covered by Items 63 to 66 even if it otherwise falls within the larger field of 'education including universities' power to legislate on that subject must lie with Parliament.....Item 11 of List II and Item 66 of List I must be harmoniously construed. The two entries undoubtedly overlap: but to the extent of overlapping, the power conferred by Item 66 List I must prevail over the power of the State under Item 11 of List II. It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour."

The following observations in Paragraphs 24 and 25 highlight the supremacy of legislation made by Parliament with reference to Entry 66:-

"(24).... The validity of the State legislation on university education and as regards the education in technical and scientific institutions not falling within Entry 64 of List I would have to be judged having regard to whether it impinges on the field reserved for the Union under Entry 66. In other words, the validity of State legislation would depend upon whether it prejudicially

affects coordination and determination of standards, but not upon the existence of some definite Union legislation directed to achieve that purpose. If there be Union legislation in respect of coordination and determination of standards, that would have paramountcy over the State law by virtue of the first part of Article 254(1); even if that power be not exercised by the Union Parliament the relevant legislative entries being in the exclusive lists, a State law trenching upon the Union field would still be invalid.

(25)..... Item 66 is a legislative head and in interpreting it, unless it is expressly or of necessity found conditioned by the words used therein, a narrow or restricted interpretation will not be put upon the generality of the words. Power to legislate on a subject should normally be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that subject. Again there is nothing either in Item 66 or elsewhere in the Constitution which supports the submission that the expression 'coordination' must mean in the context in which it is used merely evaluation, coordination in its normal connotation means harmonizing or bringing into proper relation in which all the things coordinated participate in a common pattern of action. The power to coordinate, therefore, is not merely power to evaluate, it is a power to harmonise or secure relationship for concerted action. The power conferred by Item 66 List I is not conditioned by the existence of a state of emergency or unequal standards calling for the exercise of the power".

18. In *Osmania University Teachers' Association vs. State of Andhra Pradesh*, ((1987) 4 SCC 671) the Court held as follows:

"Para - 14. Entry 25 List III relating to education including technical education, medical education and universities has been made subject to the power of Parliament to legislate under Entries 63 to 66 of List I. Entry 66 List I and Entry 25 List III should, therefore, be read together. Entry 66 gives power to Union to see that a required standard of higher education in the country is maintained. The standard of Higher Education including scientific and technical should not be lowered at the hands of any



particular State or States. Secondly, it is the exclusive responsibility of the Central Government to co-ordinate and determine the standards for higher education. That power includes the power to evaluate, harmonise and secure proper relationship to any project of national importance. It is needless to state that such a co-ordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative filed in regard to 'education' has been distributed between List I and List III of the Seventh Schedule.

Para - 15. The Parliament has exclusive power to legislate with respect to matters included in List I. The State has no power at all in regard to such matters. If the State legislates on the subject falling within List I that will be void, inoperative and unenforceable."

19. The same question was also examined in considerable detail in State of T.N. Vs. Adhiyaman Educational and Research Institute, (1995) 4 SCC 104 and the conclusions drawn were summarized in para -41 of the Report and sub-paras (i) and (ii) thereof are being reproduced below:

" 41(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonization with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolute and unconditional and in the absence of the valid compelling reasons, it must be given its full effect according to its plain and express intention.

(ii) To the extent that the State legislation is in conflict with the Central legislation though the former is purported to have been made under Entry 25 of the Concurrent List but in effect encroaches upon legislation including subordinate legislation made by the Centre under Entry 25 of the Concurrent List or

to give effect to Entry 66 of the Union List, it would be void and inoperative."

20. The interplay of Entry 66 List I and Entry 25 List III was again examined by a Constitution Bench of the Supreme Court in *Preeti Srivastava (Dr.) Vs. State of M.P.*, (1999) 7 SCC 120 in the context of lowering of standards by the State for admission to a postgraduate course in a medical college and it was held that the State cannot while controlling education in the State impinge on standards in institutions for higher education because this is exclusively within the purview of the Union Government. While considering the question whether norms for admission have any connection with the standards of education and that they are only covered by Entry 25 of List III, it was observed by the Supreme Court that any lowering of the norms of admission does have an adverse effect on the standards of education in the institutions of higher education. The standard of education in an institution depends on various factors like (i) the caliber of teaching staff; (ii) a proper syllabus designed to achieve a high level of education in a given span of time; (iii) the student-teacher ratio; (iv) equipment and laboratory facilities; (v) caliber of the students admitted; (vi) adequate accommodation in the institution; (vii) the standard of examinations held including the manner in which the papers are set and examined; and (viii) the evaluation of practical examinations done. It was pointed out that education involves a continuous interaction between the teachers and the students. The base of teaching, the level to which teaching can rise and the benefit which the students ultimately receive depends as much on the caliber of the students as on the caliber of the teachers and the availability of adequate infrastructural facilities.

21. As already stated, the MCI and AICTE Regulations (quoted above) amount to delegated legislation, and are hence to be treated as part of the Statute. Once it is accepted that the whole object of the Regulations is to determine and coordinate the standard of higher education throughout the Country, to integrate its development and to maintain certain standard in such education, it will have to be held that such norms, standards and requirements etc. will have to be uniform throughout the Country. Uniformity for the purpose of coordinated and integrated development of higher education in the Country necessarily implies such minimum standard, fulfillment of which should entitle an institution and its alumni, titles, degrees and certificates to recognition anywhere in the Country.

22. Thus, in *Dr. Preeti Srivastava v. State of M.P.*, (supra) (vide paragraph 35), the Constitution Bench of the Supreme Court observed: -

" Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State, has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusive within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission, criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254."

In the same decision the Supreme Court further observed (paragraph 52): -

" These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations framed by the Medical Council of India for postgraduate medical education."

23. In Ravindra Kumar Rai vs. State of Maharashtra, AIR 1998 SC 1227, the Supreme Court observed at paragraph 6 as follows:

" We may at the outset point out that inasmuch as there are three Boards in Maharashtra State which conduct the qualifying examination and inasmuch as



there are several universities, the State of Maharashtra would clearly fall under sub-clause (2) of Regulation 5 made by the Medical Council and not under sub-clause (3). The contention for the State that candidates from CBSE Board are small in number does not appeal to us. Inasmuch as there is no dispute that more than one Board conducts the qualifying examination and the Universities are more than one in number, sub-clause (3) of Regulation 5, in our view, is not attracted. It is also not possible for the State to say that conducting a common entrance examination will delay the admission process or that it will be extremely difficult to conduct the examination. In fact the statement in the counter affidavit to the effect that the State has been conducting a common examination for 1,80,000 students at the 10 + 2 level in the 7 divisional boards would itself show that the State is capable of conducting a Common Entrance Examination for admission to medical colleges, even if the number of students is large. We may also say that in several States, Common Entrance Examination is being conducted even before 1997 when these Regulations made by the Medical Council came into force. In fact in some States, entrance examination is conducted jointly for Engineering and Medical students also. We fail to see why the State of Maharashtra should say that it will be an arduous task".

In a recent judgment of this Court in Shri Chander Chinar Bada Akhara Udasin Society vs. State of J & K, 1996 (5) SCC 732: 1996 AIR SCW 3778, in the context of admission to Medical Colleges, and the need for a Common Entrance Examination, this Court observed (p.738) (of SCC) ; (at p.3782 of AIR) as follows:

" It need not be pointed out that the percentage of marks secured by different applicants at different type of examinations at the higher secondary

stage cannot be treated as uniform. Some of such examinations are conducted at the State level, others at the national level including the Indian School Certificate examination. The percentage secured at different examinations is bound to vary according to standard applied by such examination bodies, which is well known. As such a common entrance examination has to be held" (emphasis supplied).

24. The mandatory nature of the CET was again emphasised by the Constitution Bench of the Supreme Court in the case of Dr.Preeti Srivastava vs. State of M.P., (supra) as follows:

" A common entrance examination, therefore, provides a uniform criterion for judging the merit of all candidates who come from different universities. Obviously as soon as one concedes that there can be differing standards of teaching and evaluation in different universities, one cannot rule out the possibility that the candidates who have passed the MBBS examination from a university which is liberal in evaluating its students, would not, necessarily, have passed, had they appeared in an examination where a more strict evaluation is made. Similarly, candidates who have obtained very high marks in the MBBS Examination where evaluation is liberal, would have got lesser marks had they appeared for the examination of a university where stricter standards were applied. Therefore, the purpose of such a common entrance examination is not merely to grade candidates for selection. The purpose is also to evaluate all candidates by a common yardstick. One must, therefore, also take into account the possibility that some of the candidates who may have passed the MBBS Examination from more 'generous' universities may not qualify at the entrance examination where a better and uniform standard for judging all the candidates from different universities is applied. In the interest of selecting suitable candidates for

specialized education, it is necessary that the common entrance examination is of a certain standard and qualifying marks are prescribed for passing that examination. This alone will balance the competing equities of having competent students for specialized education and the need to provide for some room for the backward even at the stage of specialized postgraduate education which is one step below the superspecialities."

25. In view of the Regulations framed by the MCI and the AICTE, it is clear that the field is occupied and the State Legislature has no competence to pass any Legislation under Entry 25 List III.

26. Mr. Mukul Rohatgi, learned Senior Counsel, learned Advocate General Mr. N. R. Chandran and learned Additional Advocate General Mr. A. L. Somayaji however strenuously submitted that the State Government is having enabling power under Article 15(5) of the Constitution to pass the enactment in the occupied field dehors Central Legislation and it cannot be said that the State has no legal competence to enact the legislation. It is submitted that Article 15(5) which has been recently inserted by Constitution 93<sup>rd</sup> Amendment Act empowers the State to make any special provision by law for the advancement of any socially and educationally backward classes of citizens relating to their admission to educational institutions including private educational institutions whether aided or unaided by the State. It is submitted that the Act has been made in furtherance of Article 15(5) of the Constitution only to enable the students in rural areas who due to lack of infrastructure and financial resources are unable to fare well in the entrance test. Therefore, the Act is well within the power of the State Government and it cannot be said that the State Government has no legal competence to enact the legislation. In any event, according to the learned counsel the objective of the State Act is to equate different streams of school final education into one category by having one set of school final syllabus as basis and make the students from the non-State Boards to take up Common Entrance Test on the syllabus of the Tamil Nadu State Board. Therefore, the selection procedure cannot be said to be in violation of the Central Regulations. A submission is also made that the recent judgment of the 7 Judge Bench of the Supreme Court in P. A. Inamdar vs. State of Maharashtra, ((2005) 6 SCC 537) dilutes the mandate of Common Entrance Test prescribed under the Central Regulations by providing separate entrance test for different colleges separately or jointly, and hence, all



the judgments prior to P.A.Inamdar Case on the issue of Common Entrance Test are redundant. For the same reason it is submitted that if there can be more than one Common Entrance Tests, one for government college and other for private college, the State can also have a yardstick dispensing with Common Entrance Test for State Board students and conducting Common Entrance Test for other Board students.

27. We are unable to accept the submissions of the learned counsel. Article 15(5), which was enacted by the Constitution (Ninety-third Amendment), reads as follows: -

" 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth"

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

28. Article 15(5) is identically worded as Article 15 (4) with the only difference that Article 15(5) enables the State Government to make a special provision relating to admission to educational institutions including private educational institutions whether aided or unaided by the State other than minority educational institutions referred to in clause (1) of Article 15. Thus, Article 15(5) enables the State Government to pass a law relating to reservation in admission in the private professional colleges, which was not available in Article 15(4) as impliedly held in P.A.Inamdar's case. The avowed purpose of Article 15(5) is to make a special provision for the advancement of socially and educationally backward classes of citizens as well as Scheduled Caste and Scheduled Tribes relating to their admissions to educational institutions, including private educational institutions. The language used in Article 15 (5) by no stretch of imagination can be construed as a source of legislative competence for abolishing the Common Entrance Test inconsistent with the Central Act. The Statement of Objects and Reasons of the Act states that the State Government found that the Common Entrance Test was burden some to majority of students who were forced to take

up two successive examinations and the majority of the students who are at tender age, should not be further burdened or their parents should bear financial burden any further. No doubt it makes a passing reference to the students in the rural areas, but looking to the scheme of the Act, it is impossible to hold that the impugned Act is enacted to give effect to the policy underlying Article 15 (5). The pith and substance of the State Act is to abolish Common Entrance Test for the State board students and is not to give effect to any policy under Article 15(5).

29. In ASSAM SILLIMANITE LIMITED -VS- UNION OF INDIA (1992 SUPP. (1) SCC 692), the Supreme Court observed: -

"28. The extent and scope of judicial review of legislation where there is a declaration under Article 31-C of the Constitution which enjoins that no law containing a declaration that it is for giving effect to such a policy shall be called in question in any court on the plea that it does not give effect to such a policy has been considered in Kesavananda Bharati -vs- State of Kerala ((1973) 4 SCC 225). On an analysis of the majority judgment therein, Sabyasachi Mukharji, J. (as he then was) observed in Tinsukhia Electric Supply Co.Ltd. -vs- State of Assam (1989) 3 SCC 709 that the declaration in Article 31-C does not exclude the jurisdiction of the Court to determine whether the law is for giving effect to the policy of the State towards securing the principles specified in Articles 39(b) and (c). Mathew, J. had observed in Kesavananda Bharati ((1973) 4 SCC 225) that in order to decide whether a law gives effect to the policy of the State towards securing the directive principles specified in Article 39(b) or (c), a Court will have to examine the pith and substance, the true nature and character of the law as also its design and the subject matter dealt with by it together with its object and scope. If a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and

decide according to the real nature of the law."

30. There is absolutely no material produced by the State to show that the action of the Legislature to abolish CET to provide better opportunity to rural backward areas was supported by any statistical study and considerations germane to the constitutional guarantee of equality. On the other hand, the statistical data produced by the petitioners shows that the enactment would only benefit the urban matriculates, who under all situation will steal a march over the rural matriculate students, as well as students from other boards.

31. In State of U.P. v. Pradeep Tandon, 1975 (1) SCC 267, the Supreme Court has clearly ruled that the rural areas which form nearly 85% of the population of the State cannot be treated as a homogenous class. In that case, the Supreme Court held that the reservation of rural areas cannot be sustained on the ground that the rural areas represent socially and educationally backward classes of citizens. It is also pertinent to note that the Act has not been made applicable to private institutions, and the rules framed under the Act contemplate only voluntary seat sharing arrangement with the private educational institutions. We are, therefore, unable to sustain the argument that the Act was to give benefit to the State policy under Article 15(5).

32. The submission that the impugned legislation is in consonance with the Central Law as it seeks to achieve commonness among the candidates is totally misconceived and liable for rejection. Under the Central Regulations, in any State having more than one university/board/examining body a entrance examination is mandatory, whereas the State legislation while dispensing with the Common Entrance Test to the State Board students make it mandatory to the students of other Boards in the State of Tamil Nadu. As stated earlier, by enacting the Central Regulations, the parliament has laid down an exhaustive code in respect of the standard and manner of admission and it is impermissible for the State Legislature to legislate in the occupied field. In Deep Chand vs. State of U.P. (AIR 1959 SC 648) it was held that the repugnancy between two statutes may be ascertained on the basis of the following three principles:-

- (i) Whether there is direct conflict between the two provisions;
- (ii) Whether parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and



(iii) Whether the law made by parliament and the law made by the State Legislature occupy the same field.

In the instant case, the State Legislation clearly impinges upon the field occupied by the Central Law i.e., M.C.I. Regulations and A.I.C.T.E. Regulations.

33. We are also not impressed by the argument that P.A.Inamdar's Case dilutes the mandate of Common Entrance Test prescribed under the Central Regulations. P.A.Inamdar's Case did not dilute the requirement of Common Entrance Test, on the contrary, the question for consideration of the Court was once private colleges are brought out of the State power is it necessary to have State Common Entrance Test for private colleges unless they opt for the same. The Supreme Court has suggested Common Entrance Test for all the private colleges in the country. The judgment did not strike down the existing Central Government Legislations. It has only carved out the private colleges from the State conducted Common Entrance Test enabling private colleges to conduct a Common Entrance Test of their own until a proper legislation is made in that behalf for the private colleges. More over, in the present case, the question is not regarding having more than one Common Entrance Tests, one for State owned colleges and the other for private colleges. The issue which falls for our consideration in the present case is whether the State Board students who opt for admission to professional colleges should be exempted from Common Entrance Test. Paragraphs 136 and 137 of the P.A.Inamdar's Case, reproduced below emphasises the need for Common Entrance Test.

"136. Whether minority or non-minority institutions, there may be more than one similarly situated institutions imparting education in any one discipline, in any State. The same aspirant seeking admission to take education in any one discipline of education shall have to purchase admission forms from several institutions and appear at several admission tests conducted at different places on the same or different dates and there may be a clash of dates. If the same candidate is required to appear in several tests, he would be subjected to unnecessary and avoidable expenditure and inconvenience. There is nothing wrong in an entrance test being held for one group of institutions imparting same or similar education. Such institutions situated in one State or in more than one State may join together and hold a common entrance test or the State may itself or through an agency arrange for holding of such

test. Out of such common merit list the successful candidates can be identified and chosen for being allotted to different institutions depending on the courses of study offered, the number of seats, the kind of minority to which the institution belongs and other relevant factors. Such an agency conducting the common entrance test ("CET" for short) must be one enjoying utmost credibility and expertise in the matter. This would better ensure the fulfilment of twin objects of transparency and merit. CET is necessary in the interest of achieving the said objectives and also for saving the student community from harassment and exploitation. Holding of such common entrance test followed by centralised counselling or, in other words, single-window system regulating admissions does not cause any dent in the right of minority unaided educational institutions to admit students of their choice. Such choice can be exercised from out of the list of successful candidates prepared at CET without altering the order of merit inter se of the students so chosen.

137. T.M.A.Pai Foundation -vs- State of Karnataka, (2002) 8 SCC 481 has held that minority unaided institutions can legitimately claim unfettered fundamental right to choose the students to be allowed admission and the procedure therefor subject to its being fair, transparent and non-exploitative. The same principle applies to non-minority unaided institutions. There may be a single institution imparting a particular type of education which is not being imparted by any other institution and having its own admission procedure fulfilling the test of being fair, transparent and non-exploitative. All institutions imparting same or similar professional education can join together for holding a common entrance test satisfying the abovesaid triple tests. The State can also provide a procedure of holding a common entrance test in the interest of securing fair and merit based admissions and preventing maladministration. The admission procedure so adopted by a private institution or group of institutions, if it fails to satisfy all or any of the triple tests, indicated hereinabove, can be taken over by the State substituting its own procedure. The second question is answered accordingly."

34. Now the only question that remains to be considered is whether the impugned legislation violates equality doctrine enshrined in Article 14 of the Constitution. As stated earlier, the only object of the Act is to dispense with the Common Entrance Test to State Board students, while making it mandatory to other Board students. The Act, thus, makes an invidious distinction between State Board students and students of other Boards. The classification between the State Board students and other Board students and abolishing the Common Entrance Test for other Board students alone merely because other Board students are small in number is an unreasonable classification having no nexus to the object to be achieved. As held in *Ravindra Kumar Rai v. State of Maharashtra* (supra) smallness of category is not a relevant criteria. By the impugned legislation unfair advantage is conferred on the urban matriculate students in so far as they have to write only one examination in their own syllabus which they have studied for two years and the CBSE and ISC students have to write two examinations one, Plus two public entrance examination, which has been rendered irrelevant by the impugned legislation and the other Common Entrance Test in a new syllabus. It is wholly impermissible for the State to determine the inter se merits on the basis of two separate examinations, one the qualifying examination for the State Board students and the other Common Entrance Test for the non-Board students. During the course of hearing the possibility of conducting Common Qualifying Examination for the State board students as well as CBSE students was explored. But we found that conducting of such examination is impracticable and unworkable, and in any event, even holding of such common examination would not remove the vice of arbitrariness in as much as the CBSE students and ISC students would be required to appear for the examination twice one for CBSE Board qualifying examination and again for State Board qualifying examination, whereas the State Board students would face the qualifying examination only once. It is also pointed out by the learned counsel appearing for the petitioners, and in our opinion rightly, that the qualifying examination for Plus two is based solely on the syllabus contained in the text books, whereas the Common Entrance Test is based on both in syllabus and out of syllabus, and it is objective. Under the circumstances, the conclusion is irresistible and that is the impugned act is arbitrary and violates Article 14 of the Constitution.

35. In the result, we hold that the State has no power to enact Tamil Nadu Act 2 of 2006 and the Act is void, inoperative and unreasonable. The field is occupied by the Central Legislation and the State has no legal competence to enact the impugned Act, and it is also not saved by Article 15(5) of the Constitution. The Act is also liable



to be struck down as violative of principle of equality guaranteed by Article 14 of the Constitution. The writ petitions are accordingly allowed. No costs. Consequently, W.P.M.Ps are closed.

36. The State is hereby directed to start the process for holding Common Entrance Test in accordance with the MCI and AICTE Regulations for the Academic Year 2006-2007 for all the Board students.

37. Learned Advocate General seeks leave to file appeal to the Supreme Court. Leave is rejected.  
Vu/sm/pv

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Secretary to Govt. of Tamil Nadu  
Education Department, Fort Saint Geroge  
Chennai 9

2. The Chairman, Selection Committee  
Directorate of Medical Education,  
Kilpauk, Chennai 600 010.

3. The Director,  
Directorate of Medical Education,  
Kilpauk, Chennai 600 025.

+ Three copies to the Govt. Pleader sr no. 9000, 90001, 9002

+ one cc to Mr. K. Balu, Advocate sr no. 9580

+ one cc to Mr. R. Suresh Kumar, Advocate sr no. 9027

+ one cc to Mr. Gladys Daniel, Advocate sr no. 8921

+ one cc to Mr. M.T. Arunan, Advocate sr no. 9543

NM KK (03.03.2006)

W.P.Nos.3951, 4796 & 4826 of 2006