IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-04-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABE MR. JUSTICE J.A.K. SAMPATH KUMAR

WRIT PETITION Nos.5396, 5397, 5476, 5526 and 6264 of 2007
and
M.P.NOs.1 to 5 in WP.NO.5396/2007

Minor S. Aswin Kumar,
Rep. by his father and natural
guardian Mr.P.Shanmuga Nathan .. Petitioner in WP.5396/2007

Minor A.S. Prabu
Rep. by his father and natural
guardian Mr.M. Selvaraj .. Petitioner in WP.5397/2007

K. Marimuthu
S/o. Nachimuthu .. Petitioner in WP.5476/2007

Minor S. Kerthi Hanusha
Rep. by her father and natural
guardian Mr.D. Sudharsanam .. Petitioner in WP.5526/2007

Minor S. Dharani
Rep. by her father and natural
guardian Mr.T. Sambath Kumar .. Petitioner in WP.6264/2007

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai 600 009. .. Respondent No.1 in WPs.5396,5397 &5526/07 and Respondent in WP.Nos.5476 & 6264/07

2. Union of India,
   Rep. by its Secretary to
     Ministry of Law Justice and
   Company Affair, New Delhi 1.

3. The Medical Council of India,
   Pocket 14, Sector 8,
   Dwarka Phaze-1, New Delhi.

4. All India Council for Technical
     Education, I.P. Estate,
   New Delhi.

5. The Registrar,
   Council of Architecture,
   India Habitat Centre,
   Core 6-A 1st Floor, Lodhi Road,
   New Delhi. .. Respondents 2 to 5 in
   WPs.5396,5397 &5526/07

6. B. Kurusadi Xavier

7. M. Sivakumar

8. Minor S. Nisha
rep by Father and Natural Guardian R. Sivaprakasam

9. Minor Wajid S. Jafry
rep by Father and Natural Guardian A.S. Jafri

10. Minor S. Goutham Ram.,
rep by Father and Natural Guardian A.Shanmuga Vadivel

11. Minor M. Praveen Kumar
rep by Father and Natural Guardian A.Manoharan

12. Minor K.K. Arun Kumar
rep by Father and Natural Guardian K. Kandasamy

13. Minor D. Vignesh
rep by Father and Natural Guardian M.K. Dhamodaran

14. Minor K. Prabhu
rep by Father and Natural Guardian Kannapan

15. Minor V. Sindura
rep by Father and Natural Guardian M. Renida Savala

16.Minor L. Deepika
rep by Father and Natural Guardian S. Loganathan

17. Minor E. Sathyapriya
rep by Father and Natural Guardian N. Elango

18. Minor S. Praveen
rep by Father and Natural Guardian K.Sankara Namachivayam

19. Minor V. Suriya Prabha
rep by mother and Natural Guardian V. Vijayalakshmi

20. Minor B. Vasanth
rep by mother and Natural Guardian M.K. Baskaran

21. Minor M.V. Prajeeth
rep by mother and Natural Guardian M.K. Venkatesan

22. Minor M.Surendar,
rep. By Father and Natural Guardian K.S.Marudhachalam

23. Minor C.S.Shivanantharaj
rep. By Father and Natural Guardian Senthivelan

24. Minor V.Agalya
rep. By Father and Natural Guardian Mohana

25. Minor T.Vinitha
rep. By Father and Natural Guardian N.V.Thiyagarajan

26. Minor S.Preethi
rep. By Father and Natural Guardian A.Subramaniam

27. Minor B.Abinaya
rep. By Father and Natural Guardian Balasubramaniam

28. Minor S.Nithya,
rep. By Father and Natural Guardian A.M.Shanmugham

29. Minor P.J.Cehu Christy Anandhi
rep. By Father and Natural Guardian Paul Jayaraj

30. Minor R.Balakumar
rep. By Father and Natural Guardian N.Rajaram

31. Minor E.K.Premnath
rep. By Father and Natural Guardian R.Kandasamy

32. Minor D.Ramya
rep. By Father and Natural Guardian K.Dhinakaran

33. Minor S.B.Vimal Anand
rep. By Father and Natural Guardian M.Balapuranthavadivel

34. Minor K.P.Mahesh Sunder
rep. By Father and Natural Guardian K.M.Pachiappan

35. Minor S.Sugirtha
rep. By Father and Natural Guardian T.Vadivu

36. Minor S.Shanmugha Harini
rep. By Father and Natural Guardian L.Selvarasu

37. Minor K.H.Gowtham
rep. By Father and Natural Guardian .K.G.Hari Marappan

38. Minor S.Vivek Karthic
rep. By Father and Natural Guardian V.Senthilmurugan

39. Minor V.Varunkumar
rep. By Father and Natural Guardian V.Kumudha

40. Minor A.Vigneswaran
rep. By Father and Natural Guardian A.Amsaveni

41. Minor D.J.Pramoth
rep. By Father and Natural Guardian Jayaseeli

42. Minor G.R.Dharani
rep. By Father and Natural Guardian N.Ramasamy

43. Minor M.Ganesh Karthick
rep. By Father and Natural Guardian M.Vijayalakshmi

44. Minor G.Parthiban
rep. By Father and Natural Guardian G.Chitra

45. Minor M.Gokul
rep. By Father and Natural Guardian K.R.Manoharan

46. Minor AN.Saiprasanna
rep. By Father and Natural Guardian VE.Annamalai

47. Minor V.M.Kruthiga

rep. By Father and Natural Guardian V.R.Manohar

48. Minor A.Abinaya
rep. By Father and Natural Guardian A.M.ARUNACHALAM

49. Minor S.Hari Prasath,
rep. By Father and Natural Guardian S.Sudha

50. Minor N.E.Nandhini
rep. By Father and Natural Guardian Rathnamala

51. Minor R.Harish
rep. By Father and Natural Guardian V.Bhuvaneswari

52. Minor T.Naveen,
rep. By Father and Natural Guardian Tamil Selvi

53. S.Vinoth, S/o. R.Subramanian

54. Minor S.Sharmila,
rep. By Mother and Natural Guardian S.Gandhimathi

55. R.Lakshmanan

56. Minor N.Nithin Thilak,
rep. By Father and Natural Guardian N.Nallasivam

57. Minor B.Ravi Varman,
rep. By Father and Natural Guardian Baskaran

58. Minor T.Shivavishnukarthikeyan,
rep. By Mother and Natural Guardian Chinnammal

59. Minor K.H.Goutham
rep. By Father and Natural Guardian K.G.Harish

60. Minor. C.Kanagajanani
rep. by father and natural guardian Chandrasekaran

61. Kanuvarman

62. Minor M.Mathi
rep. by father and natural guardian R.Marappan

63. Minor S.Sharmila
rep. by mother and natural guardian S.Gandhimathi

64. Minor Malavika Chatruvedi
rep. by father and natural guardian Raj Chatruveki

65. Minor S. Swathy,
rep. by mother and natural guardian S.Mala

66. Minor S.Sudhika,
rep. by mother and natural guardian S.Malavizhi

67. Minor S.Suganya
rep. by mother and natural guardian S.Chitra

68. Minor R.Dinesh
rep. by father and natural guardian M.Rajendran

69. Minor M.K.Karthika
rep. by mother and natural guardian M.Muthunagai

70. Minor R.Sathyabama
rep. by mother and natural guardian R.Magudeswari

71. Minor P.Kiruthika
rep. by mother and natural guardian P.Sagunthala

72. Minor R.Sandhya
rep. by father and natural guardian B.Raviraghavan

73. Minor D.Preethi
rep. by father and natural guardian P.Duraisamy

74. Minor B.Preethi
rep. by father and natural guardian M.Balasubramanian

75. Minor R.Lakshmanan
rep. by mother and natural guardian M.Rangammal

76. Minor T.Praveenchendur
rep. by mother and natural guardian S.T.Soundrambigai

77. Minor R.Mithun Gowsik
rep. by mother and natural guardian R.Visalakshi

78. Minor R.Harish
rep. by mother and natural guardian Bhuvaneswari

79. Minor S.Sharmila
rep. by father and natural guardian K.M.Sivasamy

80. Minor V.Priyadarshini
rep. by mother and natural guardian V.Thilagam

81. Minor G.K.Sri Sruthi,
rep. by father and natural guardian K.M.Krishnamoorthy

82. Minor S.S.Bharanedharan
rep. by mother and natural guardian S.Thilagam

83. Minor B.Sowmya
rep. by mother and natural guardian B.Savithri

84. Minor S.K.Harisudan
rep. by mother and natural guardian Santhi

85. Minor J.R.Gowtham
rep. by father and natural guardian J.Rajarajan

86. Minor M.Manoranjan
rep. by Father and natural guardian Manoharan

87. Minor R.B.Bala Niveta
rep. by mother and natural guardian S.Chitra

88. Minor K.Raghuraj
rep. by mother and natural guardian K.Savithri

89. Minor K.S.Sindhu
rep. by mother and natural guardian Chitra Subramaniam

90. Mionor, M.Maju Bhashini
rep. by father and natural guardian Murugesan

91. Minor K.Sharmi
rep. by mother and natural guardian K.Gandhi

92. S.R.Gokulan

93. Minor G.Yoga Priyanka
rep. by mother and natural guardian G.Thenmalar

94. Minor S.Sughirthi
rep. by father and natural guardian S.Balu

95. Minor S.Karthikeyan
rep. by mother and natural guardian S.Aruna

96. Minor S.Agilesh
rep. by mother and natural guardian S.Majula

97. Minor K.Kalaivani
rep. by mother and natural guardian A.Kannaiyan.

98. Minor I.Amutha,
Rep. by mother and natural guardian R.Santhi

99. Minor S.Prasitthaa,
Rep. by father and natural guardian S.Sridhar

100. Minor G.Rithu
Rep.by father and natural guardian B.Govindaraju

101. Minor B.Pradeep,
Rep.by father and natural guardian D.Baskaran

102. Minor A.Dhivya
Rep.by father and natural guardian Arumugham

103. Minor S.Jayanth
Rep.by mother and natural guardian Kanagamani

104. Minor Vibin Kumar Nair
Rep.by mother and natural guardian Latha Kumari

105. Minor C.N.Nishanth
Rep.by mother and natural guardian N.Geetha

106. Minor S.Balaji
Rep.by mother and natural guardian V.Lakshmi Priya

107. Minor C.Anoopkishore
Rep.by mother and natural guardian C.Thenmozhi

108. Minor R.Senthoor
Rep.by mother and natural guardian K.Rajeswari

109. Minor K.P.ArunKumaran
Rep.by mother and natural guardian P.Thamarai

110. Minor V.Harish
Rep.by father and natural guardian K.Vijayakumar

111. Minor Vivek S.Adit
Rep.by father and natural guardian S.Suresh

112. Minor S.Pradeep Sakthi
Rep.by father and natural guardian R.Srinivasan

113. Minor T.Vinitha
Rep.by mother and natural guardian Latha Thiyagarajan

114. Minor S.Swathi
Rep.by father and natural guardian P.P.Sadasivam

115. Minor S.Karthikeyan,
Rep.by father and natural guardian R.Senthilnayagam

116. Minor.S.Sughirthi,
Rep.by mother and natural guardian S.Baby

117. Minor B.Revathi,
Rep.by mother and natural guardian B.Vasantha

118. Minor R.Ramapriya
Rep.by mother and natural guardian Viyalakshmi

119. Minor R.Jayakarthika
Rep.by father and natural guardian N.Ramasamy

120. Minor G.Premalatha,
Rep.by mother and natural guardian

121. Minor K.K.Arunkumar,
Rep.by father and natural guardian K.Kandaswami

122. Minor R.A.Kannan,
Rep.by father and natural guardian RY.Ramanathan

123. Minor R.T.Dinesh,
Rep.by father and natural guardian R.Thiyagarajan

124. Minor V.Sainath
Rep.by father and natural guardian M.Varatharajan

125. Minor G.Veerakeshwaran
Rep.by father and natural guardian M.Gopalakrishnan

Petitioners 1 and 2 working as Teacher
Petitioners 3 to 120 are students of

Bharathi Vidya Bhavan, Thindal, Erode-9.
Respondents 6 to 125 in WP Nos.5396/07
(impleaded as per Order of this Court
dated 4.4.07 in MP.3/2007 in
WP.5396 of 2007)

126. K. VEERAMANI 2nd Respondent in WP NOS. 5476/07 and 127th respondent in WP NO. 5396 & 6th Respondent in 5526/07

(Implead as per order of Court
dated 27.04.2007 in MP NOS.
1/07 in WP NO. 5476/07 5/07 in
WP NO. 5396/07 and 3/07 in WP NO. 5526/07)

Pattali Makkal Katchi (PMK)
Students represented by the
State Secretary K.Saravanan
Arakkonam .. 126th Respondent in WP NO. 5396/07

(Implead as per order of Court
dated 27.04.2007 in MP NO. 4/07
in WP NO. 5396/07

WP.No.5396/07 has been filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus forbearing the respondents from abolishing the Common Entrance Test in respect of admission to Professional Colleges in State of Tamilnadu for the academic year 2007-2008 pursuant to the Tamilnadu Admission in Professional Educational Institution Act, 2006 and consequently forbearing the 2nd respondent from granting assent to the Tamilnadu Professional Educational Institution Act 2006 in violation of the power of the Central Government under Entry 63 to 66, List I of the VII Schedule of the Constitution of India.

WP.No.5397/07 has been filed under Article 226 of the Constitution of India for the issuance of Writ of Declaration declaring the Tamilnadu Admission in Professional Educational Institution Act, 2006, Act 39 of 2006 published in the Gazette on 6.12.2006 as ultra vires to the Legislative Competence of the State of Tamil Nadu in enacting laws regulating the professional courses like Medical, Dental, Engineering and Architecture and contrary to the exclusive Legislative Competence of the Central Government under List I of the VII Schedule and set aside the same, consequently directing the 1st respondent to conduct examinations essentially with common entrance test as provided in the respective Central Legislation regulating the various professional courses.

W.P.No.5476 of 2006 has been filed under Article 226 of the

Constitution of India for issuance of Declaration declaring the Executive Policy propounded by the respondent, banning the abolition of the Common Entrance Test, and the instrument employed to execute the said policy, namely, the Tamil Nadu Admission in Professional Educational Institutions Act, 2006, banning the common entrance test, as both being illegal, devoid of legislative competence, and ultra vires Article 14 of the Constitution of India, besides being violative of the judgments of the Supreme Court and this High Court holding that the Common Entrance Test cannot be dispensed with, and consequently direct the respondent to notify the CET for admissions to Professional Courses for the year 2007-2008.

WP.No.5526/07 has been filed under Article 226 of the Constitution of India for the issuance of Writ of Declaration declaring the Tamilnadu Admission in Professional Educational Institution Act, 2006, L.A.Bill No. 39 of 2006 published in the Gazette on 6.12.2006 as ultra vires to the Legislative Competence of the State of Tamil Nadu in enacting laws regulating the professional courses like Medical, Dental, Engineering and Architecture and contrary to the exclusive Legislative Competence of the Central Government under List I of the VII Schedule and set aside the same, consequently directing the 1st respondent to conduct examinations essentially with common entrance test as provided in the respective Central Legislation regulating the various professional courses.

WP.No.6264/07 has been filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondent State to conduct Common Entrance Test for admission to Professional Colleges in the State of Tamil Nadu for the academic year 2007-2008 as per the law that applied till the academic year 2006-2007 dehors the Tamilnadu LA.Bill No.39/2006 published in Gazette dated 6.12.2006 The Tamilnadu Admission in Professional Educational Institution Act, 2006, which has not come into force.

For Petitioner in WP.Nos.5396, 5397, 5526 & 6264/07	:	Mr.K.M. Vijayan Senior Counsel for M/s. La Law
For Petitioner in WP.No.5476/07	:	Mr. Manikandan Vathan Chettiar
For Respondent Union of India	:	Mr.V.T. Gopalan Addl. Solicitor General Assisted by Mr.P. Wilson Asst. Solicitor General
For Respondent-1 in WP.Nos.5396,5397 of 2007	:	Mr.R. Viduthalai Advocate General Assisted by Mr.M. Sekar

Special Govt. Pleader

For Respondent-1
in WP.Nos.5476, 5526: Mr.N. Kannadasan
and 6264 of 2007 Addl. Advocate General
Assisted by Mr.M. Sekar
Special Govt. Pleader

For Respondent-3
Medical Council of
India : Mr.R. Singaravelan

For Respondent-4
A.I.C.T.E. : Mr.N. Muralikumar, ACGSC

For Respondent-5
Council of
Architecutre : M/s. Naveen R. Nath

For Intervener in : Mr.R. Gandhi
MP.No.3 of 2007 Senior Counsel for
in WP.No.5396/07 Mr.R.G. Narendhiran

For Intervener in : Mr. Ravivarma Kumar
M.P.No.4 of 2007 Senior Counsel for
in WP.5396/07 Mr.M. Gnanasekar

For Intervener in Mr. Thyagarajan S.C for
M.P.No.5 of 2007 : Mr.D. Veerasekaran
in WP.5396/07

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COMMON JUDGMENT

P.K. MISRA, J

The writ petitions have been filed challenging the abolition of Common Entrance Test for admission to professional courses in the State of Tamil Nadu. All such writ petitions were filed at a stage when Tamil Nadu Admission in Professional Educational Institutions Act, 2006 (Bill 39/2006) was passed, but yet to be enforced as it was reserved for the assent of the President. Subsequently, such Act received the assent of the President of India and has come into force with effect from 7.3.2007, during pednency of all such writ petitions.

To hold or not to hold a Common Entrance Test for admission to Professional Courses in Tamil Nadu is the question. In the language of the petitioners it is an instance of "twice bitten, thrice impertinence" whereas

according to the State, the main contesting respondent, it is symbolic of "third time lucky".

2. The brief facts as culled out from the averments made in several writ petitions indicate that admission to various professional colleges in the State of Tamil Nadu was being regulated by a selection process which included the conduct of a Common Entrance Test. Such procedure is being followed since 1984-85. While the matter stood thus, during the academic year 2005-2006, the State Government issued G.O.Ms.No.184 dated 9.6.2005 abolishing the Common Entrance Test and directing that admission to such professional colleges leading to grant of degrees such as Medicine, Engineering, Architecture would be based on the marks obtained in the qualifying examination i.e., +2 (Higher Secondary) Examination. A Division Bench of the High Court in the decision reported in 2005(3) CTC 449 (N. PRIYADARSHINI AND OTHERS v. THE SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT, FORT ST. GEORGE, CHENNAI 9 AND ANOTHER) quashed such Government Order. It is not in dispute that the said decision of the High Court has been challenged before the Supreme Court and appeal is pending but no interim order has been passed. Subsequently, during the year 2006, the Tamil Nadu Regulation of Admission in Professional Courses Act (II of 2006) was enacted dispensing with the holding of Common Entrance Test so far as the students who had passed +2 (Higher Secondary) Examination held by the State Board and making it obligatory for the students who had passed +2/Higher Secondary Course in the examination held by any Board other than the State Board. In the decision reported in (2006) 2 M.L.J 382 (MINOR NISHANTH RAMESH, REP. BY MOTHER/NATURAL GUARDIAN AND OTHERS v. STATE OF TAMIL NADU, REP. BY ITS SECRETARY TO GOVERNMENT, EDUCATION DEPARTMENT AND OTHERS) a Division Bench of this Court declared such Tamil Nadu Act II of 2006 as void and inoperative. It is also not in dispute that the said decision of the Division Bench has been challenged in appeal and the matter is pending before the Supreme Court without there being any interim order. While the matter stood thus, the Tamil Nadu Admission in Professional Educational Institutions Act, 2006 was enacted and the present writ petitions have been filed seeking for a direction to the Government not to abolish the Common Entrance Test. It is not in dispute that in the meantime such Act after having received the assent of the President has come into force with effect from 7.3.2007.

3. The Tamil Nadu Admission in Professional Educational Institutions Act, 2006 (Act 3 of 2007) is an Act to provide for admission to professional degree courses such as Engineering, Medicine, Dental, Agriculture and other allied courses on the basis of marks in the qualifying examination. The statement of objects and reasons indicates that the Government decided to accept the recommendation of the Committee which recommended for elimination of the Common Entrance Test. As per Section 2 (c) of the Act, "Government seats" mean,-

(i) all the seats in Government colleges, University colleges and University constituent colleges

(ii)such number of seats in aided professional educational

institutions as may be notified by the Government; and

(iii)65% of seats in each branch in non-minority unaided professional educational institutions and 50% of the seats in each branch in minority unaided professional educational institutions, in accordance with the consensus arrived at between such professional educational institutions and the Government.

As per Section 2(e) "professional educational courses" mean,-

(1) in Medical and Dental institution, the first year of
(i) Bachelor of Medicine and Bachelor of Surgery and
(ii)Bachelor of Dental Surgery.
(2) in Engineering institution, the first year of,
(i)Bachelor of Engineering;
(ii)Bachelor of Technology; and
(iii)Bachelor of Architecture.

and includes any other professional educational courses at undergraduate and postgraduate level, as may be notified by the Government in this behalf;

As per Section 3, admission to every Government seat in every professional institution shall be made on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

Section 4 contemplates that admission to seats in all unaided professional educational institutions shall be made by the consortium of unaided professional educational institutions on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

Section 5 being relevant, is extracted hereunder :-

"5.(1)The marks obtained by the students in the relevant subjects in the qualifying examination conducted by various Boards or Authority shall be equated with the marks obtained by the students in the same subjects in the qualifying examination conducted by the State Board, by adopting the method of normalization.

Explanation:- Under the method of normalization, the highest mark obtained by the students of various Boards in each subject shall be equated to the highest mart obtained by the students of State Board in that subject and the relative marks obtained by other students in that subject shall be determined accordingly.

Illustration:- If the highest marks secured by the student of State Board in Physics is 100 and the highest mark secured by a student of any other Board in the same subject is 90, both the highest marks will be considered to be equal to 100. If a student of the other Board secures 60 marks in Physics when the first mark in Physics in the same Board is 90, the 60 marks will be considered to be equal to 66.66 marks as arrived at below:-

$$\frac{100 \times 60}{90} = 66.66\%$$

(2)After normalization of marks in the relevant subjects in the qualifying examination conducted by different Boards, the qualified students of different Boards shall be merged into a common merit list.

(3)In cases where more than one student have got the same marks in the common merit list, the inter-se merit among such students shall be determined in such manner as may prescribed.

(4)The appropriate authority and the consortium of unaided professional educational institution shall prepare the rank lists for admission of students to the seats referred in section 3 and section 4, respectively and allot students through centralised counselling."

4. The basic question raised in all these writ petitions is regarding the validity of the provisions contained in such Act. The grounds of attack are as follows:-

(1) Since the matters relating to admission to professional courses like Medical, Dental, Engineering and Architecture, etc., are governed by the Central Acts, such as All India Council for Technical Education Act, 1987, The Indian Medical Council Act, 1956, The Architects Act, 1972, Dentists Act, 1948, The Indian Veterinary Council Act, 1984 and The Indian Nursing Council Act, 1947 enacted under Entry No.66 in the Union List, the State has no legislative competence to enact such provisions.

(2) The provisions contained in such Act are arbitrary and opposed to the principle of equality as enshrined in Article 14 of the Constitution.

5. A counter affidavit has been filed on behalf of the State of Tamil Nadu. In such counter affidavit, a preliminary question relating to maintainability of the writ petitions has been raised on the ground that after filing of the writ petitions, Act III of 2007 has been notified after obtaining the assent of the President of India on 3.3.2007 and in the absence of specific challenge or even amendment of the original prayer, the writ petitions should be dismissed. It is further indicated that in view of Entry 25 in List III of Seventh Schedule, the State has legislative competence to enact the statute and in the State of Tamil Nadu such provision would be operative by virtue of Article 254(2) of the Constitution of India as the assent of the President has been obtained. It is stated in the counter affidavit that after the efforts made earlier to abolish the Common Entrance Test proved futile on account of the decisions rendered by the Madras High Court, the State Government constituted a Committee of Educational experts to recommend suitable measures for abolition of Common Entrance Test from the academic year 2007-2008. The Committee conducted extensive study and invited public opinion from various districts, both rural and urban areas, on the matter relating to abolition of Common Entrance Test for admission to professional courses and after examining all the relevant factors submitted its report dated 13.11.2006. The said report has been accepted by the State on principle and thereafter a draft statute was placed in the Assembly as Bill No.39 of 2006 dated 6.12.2006 known as

Tamil Nadu Admission in Professional Educational Institutions Act, 2006, which was passed by the Assembly and signed by the Governor and thereafter it was sent for assent to the President has been obtained. It has been further indicated that the two earlier decisions of this Court, former reported in 2005(3) CTC 449 (cited supra), and the latter reported in (2006) 2 M.L.J. 382 are no longer applicable as in the former case, the G.O. was found to be illegal and in the latter case the Tamil Nadu Act II of 2006 was found to be invalid mainly on account of the fact that it offended the principles of Article 14 as Common Entrance Test was abolished only in respect of the students passing the State Board examination, which continued in respect of other students. It has been therefore highlighted that at present all the students have been treated equally by adopting the method of normalization and the Common Entrance Test has been abolished in respect of all the students and not in respect of any particular group of students.

6. The stand of the Union of India, Respondent No.2, appears to be similar as that of the State Government. The Medical Council of India and All India Council for Technical Education, arrayed as Respondents 3 and 4, have appeared. It is submitted by the counsels that in view of the legislation, which has received the assent of the President, the writ petitions are to be dismissed.

7. A counter affidavit has been filed by Respondent No.5, namely, the Registrar, Council of Architecture, New Delhi, wherein it has been indicated that the provisions relating to admission being governed by the Central Act applicable and the matter comes within the purview of the Central Legislation in view of Entry 66 of List I of Seventh Schedule, abolition of Common Entrance Test in respect of admission to architecture course is invalid and at any rate the Aptitude Test prescribed under the Minimum Standards of Architectural Regulations, 1983 is required to be held.

8. During pendency of the writ petitions, three applications have been filed for impleadment on behalf of different political parties or organisations. One such application listed earlier, was allowed and such organisation has been impleaded as a respondent with express direction that the application filed for impletion itself would be considered as a counter and no further counter is required to be filed. So far as other two applications are concerned, those were listed when the main writ petitions were taken up for hearing and learned counsels appearing for them have been heard as interveners. All of them have buttressed the submission of the State.

9. Before considering of the main contentions, it is convenient to first consider the technical objection raised by Respondents 1 and 2 to the effect that the writ petitions have been filed at a stage when the Bill had been passed by the Assembly, but the Presidential assent was yet to be obtained, and the Act was yet to be notified and enforced and in the absence of specific prayer challenging the validity of the Act after it received the Presidential assent and came into force, the writ petitions should be

dismissed.

The main question is relating to legislative competence. The Bill, as passed by the Legislative Assembly, has become the Act and has come into force during pendency of the writ petitions. The basis of challenge has remains unaltered. The objection raised by Respondents 1 and 2 appears to be technical in nature. The basic prayer is to issue a direction regarding holding of Common Entrance Test and challenging the validity of the abolition of the Common Entrance Test. We are, therefore, unable to accept such technical plea raised by Respondents 1 and 2.

10. The main contention of the petitioners is to the effect that in view of Entry 66 and in view of different Central Statutes operating in the field, the State lacks legislative competence to enact the present legislation. It is further pointed out that Entry 25 of List III itself states that such entry is subject to Entry 66 in List-I. It has been submitted by the learned Senior Counsel for the petitioners that the matter is no longer res integra as there are several decisions of the Supreme Court as well as Division Bench of this Court holding the field. It has been further submitted by him that even though such Division Bench decisions of this Court are pending in appeal, since there is no order of stay passed by the Supreme Court, the Division Bench decisions still continue to hold the field and are binding. Learned counsel for the petitioners has placed much reliance upon those two decisions. At this stage, it may be appropriate to refer to those two decisions.

11. In the decision reported in 2005(3) CTC 449 (cited supra), the Division Bench was examining the validity of G.O.Ms.No.184 dated 9.6.2005. That was a notification issued by the State Government in the purported exercise of executive power of the State under Article 162 of the Constitution by abolishing the Common Entrance Test. Incidentally it may be pointed out that at the time when the Government Order was issued on 9.6.2005, the Common Entrance Test had already been held. Since the Executive power of the State is co-terminus with the Legislative power, one of the questions raised was relating to the competence of the State to issue such Government Order with specific reference to Entry 66 in List I and Entry 25 in List III.

12. The Division Bench referred to various decisions of the Supreme Court to the effect that when there are more than one Board conducting the qualifying examination and the Universities are more than one in number, a Common Entrance test is required to be held for selecting the students for admission to such professional courses. The Division Bench ultimately observed:-

> "18. .... that a common entrance test is mandatory in the State of Tamil Nadu since there are several examining Boards in the State.
>
> 19. . . . However, in States having more than one university/board/examining body, an entrance examination is

mandatory. This is because, as pointed out in the aforesaid decisions 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 against vis-à-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 aforesaid decisions.

. . .

24. As already stated above, the 1997 Medical Council Regulations (quoted above) amount to delegated legislation, and are hence to be treated as part of the Medical Council Act. On the other hand, the impugned G.O.Ms.No. 184 Higher Education (J2) Department, dated 09.06.2005 is a purely executive order. It is well settled that an executive order cannot over ride the statutory rules or regulations.

It was further observed :-

"63. In our opinion, if the State Government wanted to depart from the selection method laid down in the Regulations, it was incumbent on it to pass an Act or Ordinance and then get the assent for it from the President of India under Article 254(2) of the Constitution, but that has not been done. Moreover, even if that had been done it is doubtful whether it would have been a valid law, since it would still be in violation of Article 14 of the Constitution, as already observed above. The impugned G.O is not a law which has received the assent of the President of India. . . .

64. In Jaya Gokul Educational Trust v. Commr. & Secy. to Govt.Higher Education Department, (2000) 5 SCC 231(vide paragraph 16) the Supreme Court noted that after the Constitutional amendment (Forty-second amendment Act, 1976) Entry 25 of List III (the Concurrent List) of the Seventh Schedule reads: -

"Education, included technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I"

Thus, the State law made under Entry 25 of List III would be repugnant to any law made by Parliament under Entry 66 of List I, to the extent of inconsistency. ..."

13. The other Division Bench decision reported in (2006) 2 M.L.J 382 (cited supra) was concerned with the validity of Tamil Nadu Regulation of Admission in Professional Courses Act (II of 2006), whereunder holding of the Test was abolished in respect of students passing from the State Board, but such Entrance Test was sought to be continued in respect of the students who had passed from other Boards. While dealing with the contentions, after analysing the various provisions contained in different Central Acts or the

Regulations issued under such Acts, it was observed :-

> "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."

14. While dealing with the question of violation of Article 14, the Division Bench also accepted the contention that the Act made an invidious distinction between students of State Board and students of other Boards.

15. Placing strong reliance upon the conclusions of the two Division Benches of this Court in the earlier litigations and by referring to entry 66 in List I and entry 25 in List III and by placing reliance upon the decision of the Supreme Court in AIR 1963 SC 703 (GUJARAT UNIVERSITY AND OTHERS v. SHRI KRISHNA RANGANATH MUDHOLKAR AND OTHERS), learned Senior Counsel appearing for the petitioners has submitted that the State Legislature has no legislative competence to enact in such matter as the field is already occupied by the Central Acts as well as the Regulations made under such Acts. It has been further submitted by him that in view of the decision of the Supreme Court in (1998) 3 SCC 183 and (1999) 7 SCC 120 (DR. PREETI SRIVASTAVA AND ANOTHER v. STATE OF M.P. AND OTHERS) and several other decisions, it has been submitted that holding of a Common Entrance Test for admission to professional courses must be taken to be mandatory.

16. Learned Advocate General has submitted that the provision contained in the Regulations framed by the Medical Council of India is aimed at providing common basis for selection where the students of the qualifying examination are drawn from different systems, but it should not be construed as the only basis. Where, methods are adopted to provide a level playing field to all concerned by adopting a method of equalisation of the marks the need for a Common Entrance Test may disappear. In this context, he has submitted that after 42nd amendment, whereunder Entry 11 of List II has been shifted and made as a part of Concurrent List in the shape of Entry 25 in List III. The State Legislature is competent to enact under the said entry and repugnancy if any with Central Legislation can be cured by taking recourse to Article 254(2). It has been submitted by him that after such amendment of the List, several decisions of the Supreme Court have recognised the role of the State Legislature in making provisions relating to admission and such provisions have been upheld on the footing that there has been no conflict between the Central Legislation and the State Legislation as such provisions are considered as supplemental and not in derogation of the central statute. He has placed particular reliance upon the decision of the Supreme Court reported in (1995) 4 SCC 104 (STATE OF TAMIL NADU AND ANOTHER v. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE AND OTHERS).

17. Mr.N. Kannadasan, learned Addl. Advocate General, appearing for the State in some of the writ petitions, has submitted that the two decisions of the Supreme Court relied upon by the Division Benches of this Court in the earlier litigations were rendered in the peculiar facts and circumstances, when no specific statutory provision had been made by the concerned State after obtaining Presidential assent, it cannot be said that the ratio of those decisions would be made applicable even where specific statutory provision had been made after obtaining assent under Article 254 (2). It is further submitted by him that the Act is based upon an in depth study by the expert committee. He has further submitted that hitherto the selection was being made on the basis of the marks obtained in Common Entrance test as well as the marks obtained in the relevant subjects in the qualifying examination in the proportion of 1:2 and since certain defects were found by the Division Benches in the Government Order or the Act abolishing the Entrance Test, efforts have been made to cure those defects and process of normalization of marks has been adopted and, therefore, it cannot be said that the students appearing through different Boards are not being treated equally.

18. The Additional Solicitor General appearing for Respondent No.2 has substantially supported the stand of the State. He has submitted that the decision of the Supreme Court in Preeti Srivastava's case is distinguishable inasmuch as in the said case the question was in connection with admission to Post Graduate courses and therefore the relevant entry was Entry 66 in the Union List and the said decision cannot be made applicable while considering the legislation relating to admission to M.B.B.S. Course. He has further submitted that it cannot be said that Regulations made by Medical Council and AICTE owe their origin and validity to Entry 66 of the Union List and on the other hand can be construed to be based on Entry 25 in the Concurrent List. He has further submitted that two Division Bench decisions of this Court, are based on certain observations of the Supreme Court given on the peculiar facts and circumstances of those cases which have no universal application.

He has placed the relevant files concerning the different Ministries while dealing with the request of the State Government for obtaining the Presidential assent and has submitted that after careful consideration such assent has been accorded and in view of the provisions contained in Article 254(2), the State Act should prevail over the Central Legislation or the Regulations made under the Central Acts within the State of Tamil Nadu. He has also submitted that presumption regarding constitutional validity of an Act is applicable which becomes stronger because of the fact that the matter has been carefully considered by the concerned Ministries.

19. Mr. N. Muralikumar, Additional Central Government Standing Counsel, appearing for All India Council for Technical Education has also supported the contention raised by the learned Advocate General and the Addl. Solicitor General and has submitted that a careful reading of the AICTE Regulations would indicate that the provision relating to holding of

Common Entrance Test for admission to professional courses should be construed as directory.

20. Similarly, Mr.R. Singaravelan, appearing for Medical Council of India, has submitted that Medical Council Regulation indicates that holding of Common Entrance Test should be held to be mandatory in respect of All India Institutes, whereas holding of such Common Entrance Test should be construed as directory for the purpose of admission to professional courses. He has also further submitted that the intention is to select on a common basis and if any other reasonable transparent common basis for selection on merit can be devised, there need not be any objection to such method of selection.

21. Mr.Naveen R. Nath, appearing for Council of Architecture, has, however, sung a different tune. As a matter of fact, as already noticed, the counter by Respondent No.5, namely, The Registrar, Council of Architecture, has indicated that for the purpose of admission to architecture holding of an aptitude test cannot be dispensed with and the relevant Regulation should be taken to be mandatory as such Regulation, particularly relating to holding of aptitude test, is for the purpose of upholding the standard of education relating to architecture.

22. Mr. Ravivarma Kumar, Senior Counsel, who has appeared for the interveners in M.P.No.4 of 2007 in W.P.No.5396 of 2007 for Pattali Makkal Katchi (PMK) Students Wing, has placed reliance upon the decision of the Supreme Court reported in (1996) 3 SCC 15 (THIRUMURUGA KIRUPANANDA VARIYAR THAVATHIRU SUNDARA SWAMIGAL MEDICAL EDUCATIONAL & CHARITABLE TRUST) and has submitted that the legislation made by the State on the basis of Entry 25 in concurrent list having received the assent of the President, such law is required to be followed within the State in view of the specific provision contained in Article 254(2) of the Constitution of India.

23. Mr. Gandhi, learned Senior Counsel, appearing for the intervener in M.P.No.2 of 2007 in WP.No.5396 of 2007, who has filed an application for being impleaded, has adopted the submission made by the Advocate General and the Addl. Solicitor General and submitted that since the State Act reflects the collective aspiration of overwhelming majority of the students, such legislation should be upheld.

24. Mr. A.Thiagarajan, learned counsel appearing for intervener Mr.K. Veeramani, has similarly supported the stand of the State and has submitted that the State Legislation being referable to Entry 25 in List III and having received the assent of the President, should be upheld.

25. In AIR 1958 SC 468 = (1958) SCR 1422 (M.P.V. SUNDARAJAMIER & CO. v. THE STATE OF ANDHRA PRADESH & ANOTHER), it was stated inter alia:-

> "4 . The entries in the legislative lists must be construed broadly and not narrowly or in a pedantic manner.
>
> 5 . The entries in the two lists — Lists I and II — must be

construed, if possible, so as to avoid conflict. Faced with a suggested conflict between entries in List I and List II, what has first to be decided is whether there is any conflict. If there is none, the question of application of the non obstante clause "subject to" does not arise. And, if there be conflict, the correct approach to the question is to see whether it was possible to effect a reconciliation between the two entries so as to avoid a conflict and overlapping.

6 . In the event of a dispute arising it should be determined by applying the doctrine of pith and substance to find out whether between two entries assigned to two different legislatures the particular subject of the legislation falls within the ambit of the one or the other. Where there is a clear and irreconcilable conflict of jurisdiction between the Centre and a Provincial Legislature it is the law of the Centre that must prevail. (AIR pp. 494-95, para 56)"

26. In AIR 1959 SC 648(DEEP CHAND AND OTHERS v. STATE OF UTTAR PRADESH AND OTHERS), the Supreme Court observed :-

"28. . . . Article 254 (1) lays down a general rule. Clause (2) is an exception to that Article and the proviso qualifies the exception. If there is repugnancy between the law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, the law made by Parliament shall prevail to the extent of the repugnancy and the law made by the State shall, to the extent of such repugnancy, be void. Under cl. (2), if the Legislature of a State makes a provision repugnant to the provisions of the law made by Parliament, it would prevail if the legislation of the State received the assent of the President. Even in such a case, Parliament may subsequently either amend, vary or repeal the law made by the Legislature of a State...." (Emphasis added)

27. In AIR 1976 SC 1031 (THE KERALA STATE ELECTRICITY BOARD v. INDIAN ALUMINIUM CO. LTD., AND OTHERS), the validity of the Kerala State Electricity Supply (Kerala State Electricity Board and Licensees Areas) Surcharge Order, 1968 was in question. It was observed :-

"3. There is, in the arguments on behalf of the respondents, a certain amount of confusion. The question of repugnance arises only in case both the legislations fall within the same List III. There can, therefore, be no question of repugnance between the Electricity Act and the Electricity (Supply) Act on the one hand and the Kerala Act on the other, if the former fall in List I or List III and the latter in List II. If any legislation is enacted by a State Legislature in respect of a matter falling within List I that will be without jurisdiction and therefore void."

. . .

5.In view of the provisions of Article 254, the power of Parliament to legislate in regard to matters in List III, which are dealt with by clause (2), is supreme. The Parliament has exclusive power to legislate with respect to matters in List I. The State Legislature has exclusive power to legislate with respect to matters in List II. But this is subject to the provisions of clause (1) (leaving out for the moment the reference to clause 2). The power of Parliament to legislate with respect to matters included in List I is supreme notwithstanding anything contained in clause (3) (again leaving out of consideration the provisions of clause 2). Now what is the meaning of the words "notwithstanding" in clause (1) and "subject to" in clause (3)? They mean that where an entry is in general terms in List II and part of that entry is in specific terms in List I, the entry in List I takes effect notwithstanding the entry in List II. This is also on the principle that the 'special' excludes the 'general' and the general entry in List II is subject to the special entry in List I. . . . Furthermore, the word 'notwithstanding' in clause (1) also means that if it is not possible to reconcile the two entries the entry in List I will prevail. But before that happens attempt should be made to decide in which list a particular legislation falls. For deciding under which entry a particular legislation falls the theory of "pith and substance" has been evolved by the Courts. If in pith and substance a legislation falls within one List or the other but some portion of the subject-matter of that legislation incidentally trenches upon and might come to fall under another List, the Act as a whole would be valid notwithstanding such incidental trenching. These principles have been laid down in a number of decisions."

"11. . . . That the question of repugnancy can arise only with reference to a legislation falling under the Concurrent List is now well settled. In A. S. Krishna v. State of Madras, (1957 SCR 399) = (AIR 1957 SC 297) after referring to Section 107 of the Government of India Act, 1935, which is in terms similar to clause (1) of Art. 254, this Court observed.

> "For this section to apply, two conditions must be fulfilled: (1) The provisions of the provincial law and those of the Central legislation must both be in respect of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the provincial law will, to the extent of the repugnancy, become void."

To the similar effect is the decision in P. N. Kaul v. State of J and K, (1959 Supp (2) SCR 270) = (AIR 1959 SC 749).The whole

question of repugnancy is elaborately discussed in J. and K. State v. M. S. Farooqi, (1972 (3) SCR 881) = (AIR 1972 SC 1738)."
(Emphasis added by us)

28. In AIR 1979 SC 898 (M. KARUNANIDHI v. UNION OF INDIA), it was observed :-

"8. It would be seen that so far as clause (1) of Article 254 is concerned it clearly lays down that where there is a direct collision between a provision of a law made by the State and that made by Parliament with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the State law would be void to the extent of the repugnancy. This naturally means that where both the State and Parliament occupy the field contemplated by the Concurrent List then the Act passed by Parliament being prior in point of time will prevail and consequently the State Act will have to yield to the Central Act, In fact, the scheme of the Constitution is a scientific and equitable distribution of legislative powers between Parliament and the State Legislatures. First, regarding the matters contained in List I, i.e. the Union List to the Seventh Schedule, Parliament alone is empowered to legislate and the State Legislatures have no authority to make any law in respect of the Entries contained in List I, Secondly, so far as the Concurrent List is concerted, both Parliament and the State Legislatures are entitled to legislate in regard to any of the Entries appearing therein, but that is subject to the condition laid down by Article 254 (1) discussed above. Thirdly, so far as the matters in List II, i.e. the State List are concerned, the State Legislatures alone are competent to legislate on them and only under certain conditions Parliament can do so. It is, therefore, obvious that in such matters repugnancy may result from the following circumstances:-

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.

2. Where however, a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.

3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List

entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the state Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254 (2) of the Constitution. The result of obtaining the assent of the president would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

(Emphasis added)

29. The principles have been succinctly summarised and restated by a Bench of three learned Judges of the Supreme Court on a review of the available decision in AIR 1983 SC 1019 (M/S. HOECHST PHARMACEUTICALS LTD. AND ANOTHER v. STATE OF BIHAR AND OTHERS). They are:

(1) The various entries in the three lists are not "powers" of legislation but "fields" of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States .

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) (Omitted as relating to tax)

(4) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense.

The words and expressions employed in drafting the entries must be given the widest-possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeratio of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters .

(5) Where the legislative competence of the legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the legislature which enacted it, an incidental encroaching in the field assigned to another legislature is to be ignored. While reading the three lists, List I has priority over Lists III and II and List III has priority over List II. However, still, the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I .

30. In (2004) 9 SCC 755 (M.P. VIDYUT KARAMCHARI SANGH v M.P. ELECTRICITY BOARD), the position has been summarized as follows :-

"20. . . . Parliament has exclusive power to make laws in respect of any of the matters enumerated in List I in the Seventh

Schedule. Similarly, State Legislatures have exclusive power to make laws in respect of any of the matters enumerated in List II. Parliament and State Legislatures both have legislative power to make laws with respect to any matter enumerated in List III of the Concurrent List.

21. The various entries in the three lists are fields of legislation. They are designed to define and delimit the respective areas of legislative competence of the Union and State Legislatures. Since legislative subjects cannot always be divided into watertight compartments; some overlappings between Lists I, II and III of the Seventh Schedule are inevitable.

22. Notwithstanding the fact that great care with which the various entries in the three lists have been framed; on some rare occasions it may be found that one or the other field is not covered by these entries. The makers of our Constitution have, in such a case, taken care by conferring power to legislate on such residuary subjects upon the Union Parliament including taxation by reason of Article 248 of the Constitution.

23. The doctrine of pith and substance, however, is taken recourse to when examining the constitutionality of an Act with respect to competing legislative competence of Parliament and the State Legislature qua the subject-matter. Incidental entrenchment, however, is permissible.

24. As in a federal constitution, division of legislative powers between the Central and Provincial Legislatures exists, controversies arise as regards encroachment of one legislative power by the other, particularly in cases where both the Union as well as the State Legislature have the competence to enact laws. Article 254 provides that if any provision of a law made by the legislature of a State is repugnant to any provision 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 provisions of clause (2), the law made by Parliament shall prevail to the extent of the repugnancy required.

25. In terms of clause (2) of Article 254 of the Constitution of India, where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provisions repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to the matters, then the law so made by the legislature of such State shall, if it has been reserved for consideration of the President and has received its assent, prevail in that State.

. . . .

27. Furthermore, both Parliament and the State within their own respective legislative competence may make legislations

covering more than one entry in the three lists contained in the Seventh Schedule of the Constitution of India. Article 254 of the Constitution of India would be attracted only when legislations covering the same ground both by the Centre and by the Province operate in the field; both of them being competent to enact. (See Deep Chand v. State of U.P., M. Karunanidhi v. Union of India and State of W.B. v. Kesoram Industries Ltd.)

28. Recourse to the said principles, however, would be resorted to only when there exists direct conflict between two provisions and not otherwise. Once it is held that the law made by Parliament and the State Legislature occupy the same field, the subsequent legislation made by the State which had received the assent of the President of India indisputably would prevail over the parliamentary Act when there exists direct conflict between two enactments. Both the laws would ordinarily be allowed to have their play in their own respective fields. However, in the event there does not exist any conflict, the parliamentary Act or the State Act shall prevail over the other depending upon the fact as to whether the assent of the President has been obtained therefor or not. (See Bharat Hydro Power Corpn. Ltd. v. State of Assam) "

31. In THE STATE OF WEST BENGAL v. KESORAM INDUSTRIES LTD. AND OTHERS [(2004)10 SCC 201 = 2004(1) SCALE 425], it was observed:

"31. Article 245 of the Constitution is the fountain source of legislative power. It provides subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State. The legislative field between Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, called the "Union List". Subject to the said power of Parliament, the legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the "Concurrent List". Subject to the abovesaid two, the legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the "State List". Under Article 248 the exclusive power of Parliament to make laws extends to any matte r not enumerated in the Concurrent List or State List. The power of making any law imposing a tax not mentioned in the Concurrent List or State List vests in Parliament. This is what is called the residuary power vesting in Parliament.

After referring to the decision of the Supreme Court in AIR 1983 SC 1019 (cited supra), various principles were summarised in para 129 of the above decision. Since the power relating to taxation is not necessary, without extracting those principles, we deem it proper to extract the other principle which is relevant for our purpose.

> "(5) The entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:
>
> One — Is it still possible to effect reconciliation between two entries so as to avoid conflict and overlapping?
>
> Two — In which entry the impugned legislation falls by finding out the pith and substance of the legislation? and
>
> Three — Having determined the field of legislation wherein the impugned legislation falls by applying the doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?"

32. At this stage, it may be necessary to notice the proposition submitted by the learned Advocate General to the following effect:-

Whether the legislation by Parliament is on the basis of Entry in the Union List or in the Concurrent List, once a Legislation is made by the State and assent of the President is obtained, such law would be operative within such State.

33. In our opinion, such a submission is only to be stated to be rejected. However, we find that there are a few decisions of the Supreme Court which clearly reflect that such submission cannot be countenanced.

34. In AIR 1957 SC 297 (A. S. Krishna v. State of Madras) while dealing with Section 107(1) of the Government of India Act, 1935, which provision was the precursor of Article 254 of the Constitution of India, it was observed:-

> "For this section to apply, two conditions must be fulfilled : (1) The provisions of the Provincial law and those of the Central legislation, must both be in respect of a matter which

is enumerated in the Concurrent List (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the Provincial law will to the extent of the repugnancy. become void."

35. In AIR 1983 SC 150 (T. BARAI v. HENRY AH HOE AND ANOTHER), it was observed :-

"15. There is no doubt or difficulty as to the law applicable. Article 254 of the Constitution makes provision firstly, as to what would happen in the case of conflict between a Central and State law with regard to the subjects enumerated in the Concurrent List, and secondly, for resolving such conflict. Article 254 (1) enunciates the normal rule that in the event of a conflict between a Union and a State law in the concurrent field, the former prevails over the latter. Clause (1) lays down that if a State law relating to a concurrent subject is 'repugnant' to a Union law relating to that subject, then, whether the Union law is prior or later in time, the Union law will prevail and the State law shall, to the extent of such repugnancy, be void. To the general rule laid down in Clause (1), Clause (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union, both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency between the two, and no more. In short, the result of obtaining the assent of the President to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only."
(Emphasis added)

36. In AIR 1983 SC 1019 (cited supra), it was observed :-

"68. We fail to comprehend the basis for the submission put forward on behalf of the appellants that there is repugnancy between sub-section (3) of Section 5 of the Act which is relatable to Entry 54 of List II of the Seventh Schedule and paragraph 21 of the Control Order issued by the Central Government under sub-section (1) of Section 3 Of the Essential Commodities Act relatable to Entry 33 of List III and therefore sub-section (3) of Section 5 of the Act which is a law made by the State Legislature is void under Article 254 (1). The question of repugnancy under Article 254 (1) between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict

between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy become void. Article 254 (1) has no application to cases of repugnancy due to over lapping found between List II on the one hind and List I and List III on the other. If such overlapping exists 'in any particular case, the State law will be ultra vires because of the non obstante clause in Art. 246 (1) read with the opening words "Subject to" in Article 246 (3). In such a ease, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. It is no doubt true that, the expression "a law made by Parliament which Parliament is competent to enact" in Article 254 (1) is susceptible of a construction that repugnance between a State law and a law made by Parliament may take place outside the concurrent sphere because Parliament is competent to enact law with respect to subjects included in List III as well as "List I". But if Article 254 (1) is read as a whole, it will be seen that it is expressly made subject to Clause (2) which makes reference to repugnancy in the field of Concurrent List - in other words, if Cl. (2) is to be the guide in the determination of scope of Clause (1), the repugnancy between Union and State law must be taken to refer only to the Concurrent field. Article 254 (1) speaks of a State law being-repugnant to (a) a law made by Parliament, at (b) an existing law.

69. There was a controversy at one time as to whether the succeeding words "with respect to one of the matters enumerated in the Concurrent List" govern both (a) and (b) or (b) alone. It is now settled that the words "with respect to" qualify both the clauses in Article 254 (1) viz a law made by Parliament which Parliament is competent to enact as well as any provision of an existing law. The underlying principle is that the question of repugnancy arises only when both the Legislatures are competent to legislate in the same field i. e. with respect to one of the matters enumerated in the Concurrent List. Hence, Article 254 (1) cannot apply unless both the Union and the State laws relate to a subject specified in the Concurrent List, and they occupy the same field. (Emphasis added)

The above decisions in AIR 1957 SC 297), AIR 1983 SC 150 and AIR 1983 SC 1019 (cited supra) were specifically relied upon in the Constitution Bench decision in Keshoram's case [2004(10) SCC 201].

37. In view of the clear enunciation in the aforesaid decisionS, the contention of the learned Advocate General to the effect that Article 254(2) can also be availed when State Legislature legislates a matter relating to Concurrent List and there is repugnancy between such law and the law made by the Parliament even in respect of the subject covered under the

Union List, cannot be countenanced at all.

38. With the above general propositions relating to the scheme of the legislative power of the Parliament and the State with particular reference to Article 254, it would be appropriate at this stage to notice various decisions specifically relating to interplay between entry 66 of the Union List and entry 11 of the State List, which has been subsequently deleted and has formed part of entry 25 of Concurrent List after 42nd Amendment.

39. The legislative competence of Parliament and the legislatures of the States to make laws under Article 246 is regulated by the VIIth Schedule to the Constitution. In the VIIth Schedule as originally in force, Entry 11 of List II gave to the State an exclusive power to legislate on

> "education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III".

Entry 11 of List II was deleted and Entry 25 of List III was amended with effect from 3-1-1976 as a result of the Constitution 42nd Amendment Act of 1976. The present Entry 25 in the Concurrent List is as follows:

> "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."

Entry 25 is subject, inter alia, to Entry 66 of List I. Entry 66 of List I is as follows:

> "66. Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

40. At the time when 'education' was in the State List in the form of Entry 11 in List II, a matter relating to interplay between Entry 66 in List I and such entry in the State List was considered by a Constitution Bench of the Supreme Court in AIR 1963 SC 703 (GUJARAT UNIVERSITY AND OTHERS v. SHRI KRISHNA RANGANATH MUDHOLKAR AND OTHERS), it was observed:-

> "23. ... By item 66 power is entrusted to Parliament to legislate on "co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Item 25 of the Concurrent List confers power upon the Union Parliament and the State Legislatures to enact legislation with respect to "vocational and technical training of labour." It is manifest that the extensive power vested in the Provincial Legislature to legislate with respect to

higher, scientific and technical education and vocational and technical training of labour, under the Government of India Act is under the Constitution controlled by the five items in List I and List III mentioned in item 11 of List II. 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 the Parliament. Use of the expression "subject to" in item 11 of List II of the Seventh Schedule clearly indicates that legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In Hingir-Rampur Coal Co. Ltd. v. State of Orissa, 1961-2 SCR 537 : (AIR 1961 SC 459), this Court in considering the import of the expression "subject to" used in an entry in List II, in relation to an entry in List I observed that to the extent of the restriction imposed by the use of the expression "subject to" in an entry in List II, the power is taken away from the State Legislature. 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 a subject of 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 the 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 III. ....

24. The State has the power to prescribe the syllabi and courses of study in the institutions named in Entry 66 (but not falling within entries 63 to 65) and as an incident thereof it has the power to indicate the medium in which instruction should be imparted. But the Union Parliament has an overriding legislative power to ensure that the syllabi and courses of study prescribed and the medium selected do not impair standards of education or render the coordination of such standards either on an All India or other basis impossible or even difficult. Thus, though the powers of the Union and of the State are in the Exclusive Lists, a degree of overlapping is inevitable. It is not possible to lay down any general test which would afford a solution for every question which might arise on this head. On the one hand, it is certainly within the province of the State Legislature to prescribe syllabi and courses of study and, of course, to indicate the medium or media of instruction. On the other hand, it is also within the power of the Union to legislate in respect of media of instruction so as to ensure co-ordination and determination of standards, that is, to ensure maintenance or improvement of standards. The fact that the Union has not legislated, or refrained from legislating to the full extent of its powers does not invest the State with the power to legislate in respect of a

matter assigned by the Constitution to the Union. It does not, however, follow that even within the permitted relative fields there might not be legislative provisions in enactments made each in pursuance of separate exclusive and distinct powers which may conflict. Then would arise the question of repugnancy and parmountcy which may have to be resolved on the application of the "doctrine of pith and substance" of the impugned enactment. 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 co-ordination 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 co-ordination and determination of standards, that would have parmountcy over the State law by virtue of the first part of Art. 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.
(Emphasis added)

41. The power of the State to prescribe certain norms for admission to colleges came for consideration before the Supreme Court in R. Chitralekha v. State of Mysore (AIR 1964 SC 1823) wherein it was observed:

> "... that if the law made by the States by virtue of Entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legislative power of the Parliament under the entry 'Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions' reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on Entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in such case." (Emphasis added)

42. In Prem Chand Jain v. R.K. Chhabra (1984) 2 SCC 302 the Supreme Court observed :-

"8. Education including universities" was a State subject

until by the Forty-second Amendment of the Constitution in 1976, that entry was omitted from the State list and, was taken into Entry 25 of the Concurrent List. But as already pointed out the Act essentially intended to make provisions for the coordination and determination of standards in universities and that, as already indicated, is squarely covered under Entry 66 of List I. While legislating for a purpose germane to the subject covered by that entry and establishing a University Grants Commission, Parliament considered it necessary, as a regulatory measure, to prohibit unauthorised conferment of degrees and diplomas as also use of the word "university" by institution which had not been either established or incorporated by special legislation. We are not inclined to agree with the submission advanced on behalf of the appellants that in doing so Parliament entrenched upon legislative power reserved for the State Legislature. The legal position is well-settled that the entries incorporated in the lists covered by Schedule VII are not powers of legislation but "fields" of legislation. (Harakchand v. Union of India.) In State of Bihar v. Kameshwar this Court has indicated that such entries are mere legislative heads and are of an enabling character. This Court has clearly ruled that the language of the entries should be given the widest scope or amplitude. Navinchandra v. CIT. Each general word has been asked to be extended to all ancillary or subsidiary matters which can fairly and reasonably be comprehended. (See State of Madras v. Cannon Dunkerley). It has also been held by this Court in Check Post Officer v. K.P. Abdulla Bros. that an entry confers power upon the Legislature to legislate for matters ancillary or incidental, including provision for avoiding the law. As long as the legislation is within the permissible field in pith and substance, objection would not be entertained merely on the ground that while enacting legislation, provision has been made for a matter which though germane for the purpose for which competent legislation is made it covers an aspect beyond it. In a series of decisions this Court has opined that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature enacting it, it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature. (See State of Karnataka v. Ranganatha Reddy; K.S.E. Board v. Indian Aluminium Co.; Subrahmanyan Chettiar v. Muttuswami 1, Prafulla Kumar Mukherjee v. Bank of Commerce 2; Ganga Sugar Corpn. v. State of U . P . 3) We, therefore, do not accept the submission that the definition of university given in Section 2 (f) or the prohibition in Section 23 of the Act are ultra vires the Parliament on the ground that such provisions are beyond its legislative competence."

43. In (1987) 4 SCC 671 (OSMANIA UNIVERSITY TEACHERS' ASSOCIATION v. STATE OF ANDHRA PRADESH AND ANOTHER), the question for consideration was regarding the validity of Andhra Pradesh Commisionerate of Higher Education Act, 1986. The contention was to the effect that the State Legislature did not have any authority to enact such law as such Act was just a duplicate of the University Grants Commission Act (UGC Act) and the State had no legislation to enact at all since it squarely fell under entry 66 of List I. The Full Bench of Andhra Pradesh High Court had negatived such contention. While considering the appeal, the Supreme Court observed :-

> "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 coordinate 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 coordinate action in higher education with proper standards, is of paramount importance to national progress. It is in this national interest, the legislative field in regard to "education" has been distributed between List I and List III of the Seventh Schedule.
>
> 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. . . .
>
> (Emphasis added)

44. In (1995) 4 SCC 104 (STATE OF TAMIL NADU AND ANOTHER v. ADHIYAMAN EDUCATIONAL & RESEARCH INSTITUTE AND OTHERS), the short question involved was whether after coming into force of All India Council for Technical Education Act, 1987 (Central Act), the State Government had power to grant and withdraw permission to start a technical institution as defined in the Central Act. The Supreme Court observed:-

> "12. The subject "coordination and determination of standards in institutions for higher education or research and scientific and technical institutions" has always remained the special preserve of Parliament. This was so even before the Forty-second

Amendment, since Entry 11 of List II even then was subject, among others, to Entry 66 of List I. After the said Amendment, the constitutional position on that score has not undergone any change. All that has happened is that Entry 11 was taken out from List II and amalgamated with Entry 25 of List III. However, even the new Entry 25 of List III is also subject to the provisions, among others, of Entry 66 of List I. It cannot, therefore, be doubted nor is it contended before us, that the legislation with regard to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions has always been the preserve of Parliament. What was contended before us on behalf of the State was that Entry 66 enables Parliament to lay down the minimum standards but does not deprive the State legislature from laying down standards above the said minimum standards. We will deal with this argument at its proper place.

13. We may now refer to the provisions of Articles 246, 248 and 254 in Part II of Chapter I which relates to the distribution of the legislative powers between Parliament and the State legislatures. It is not necessary to enter into a detailed discussion of these articles since they have been the subject-matter of various decisions of this Court. We may only summarise the effect of these articles as has emerged through the judicial decisions, so far as it is relevant for our present discussion. While Article 246 states the obvious, viz., that Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I and has also the power to make laws with respect to any of the matters enumerated in List III, the State legislature has exclusive power to make laws with respect to any of the matters enumerated in List II subject, of course, to Parliament's power to make laws on matters enumerated in List I and List III. Parliament has also power to make laws on matters enumerated in List II for any part of the territory of India not included in a State. Article 248 vests Parliament with the exclusive power to make any law not enumerated in the Concurrent List or the State List including the power of making any law imposing a tax not mentioned in those lists. This is a residuary power of legislation conferred on Parliament and is specifically covered by Entry 97 of List I. In case of repugnancy in the legislations made by Parliament and the State legislatures which arises in the case of legislations on a subject in List III, the law made by Parliament whether passed before or after the law passed by the State legislature shall prevail and to that extent, the law made by the legislature of a State will be void. Where, however, the law made by the legislature of a State is repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the law made by the legislature of the State shall, if it has received the assent of the President, prevail in that State. However, this does not

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.

. . .

27. . . . What is further, the primary object of the Central Act, as discussed earlier, is to provide for the establishment of an All India Council for Technical Education with a view, among others, to plan and coordinate the development of technical education system throughout the country and to promote the qualitative improvement of such education and to regulate and properly maintain the norms and standards in the technical education system which is a subject within the exclusive legislative field of the Central Government as is clear from Entry 66 of the Union List in the Seventh Schedule. All the other provisions of the Act have been made in furtherance of the said objectives. They can also be deemed to have been enacted under Entry 25 of List III. This being so, the provisions of the State Act which impinge upon the provisions of the Central Act are void and, therefore, unenforceable. It is for these reasons that the appointment of the High Power Committee by the State Government to inspect the respondent-Trust was void as has been rightly held by the High Court."

Ultimately, it was observed :-

"41. What emerges from the above discussion is as follows:

[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 harmonisation 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 any 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.

[iii] If there is a conflict between the two legislations, unless the State legislation is saved by the provisions of the main part of Clause [2] of Article 254, the State legislation being repugnant to the Central legislation, the same would be inoperative.

[iv] Whether the State law encroaches upon Entry 66 of the Union List or is repugnant to the law made by the Centre under Entry 25 of the Concurrent List, will have to be determined by the examination of the two laws and will depend upon the facts of each case.

[v] When there are more applicants than the available situations/seats, the State authority is not prevented from laying down higher standards or qualifications than those laid down by the Centre or the Central authority to short-list the applicants. When the State authority does so, it does not encroach upon Entry 66 of the Union List or make a law which is repugnant to the Central law.

[vi] However, when the situations/ seats are available and the State authorities deny an applicant the same on the ground that the applicant is not qualified according to its standards or qualifications, as the case may be, although the applicant satisfies the standards or qualifications laid down by the Central law, they act unconstitutionally. So also when the State authorities derecognise or disaffiliate an institution for not satisfying the standards or requirement laid down by them, although it satisfied the norms and requirements laid down by the central authority, the State authorities act illegally.

(Emphasis added)

45. In (1996) 3 SCC 15 (cited supra), the only question required to be decided was regarding the requirement of essentiality certificate from the State. While deciding the matter, the Supreme Court observed :-

"18. 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. . . .

19. 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. . . .

20. 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 Parliament can add to, amend, vary or repeal the law made by the legislature of a State."

Thereafter the Supreme Court examined the question as to whether there was repugnancy between Section 5(5) of the State Act and Section 10-A introduced in the Medical Council Act. After analysing the scope and contents of both the Acts, it was further observed :-

"31. It would thus appear that in Section 10-A 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 laid 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 is repugnant to Section 10-A 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.

32. 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 Amaidas v. State of Bombay, SCR at p.809; Deep Chand v. State of U.P. 2 , SCR at p. 51.)"

46. According to the learned Senior Counsel Mr.Ravivarma Kumar, the ratio of this decision furnishes a complete answer to the problem inasmuch as in the present case the assent of the President has been obtained, it must be held that legislation made by the State would be operative within the State of Tamil Nadu.

47. Mr.K.M. Vijayan, learned Senior Counsel for the petitioners, on the other hand submitted that in the aforesaid decision the State Legislature had made the necessary legislation on the basis of Entry 25 in List III and similarly it had been submitted by the counsel for both the parties that the amendment made to the Central Act was in purported exercise of Entry 25 in the very same concurrent list and, therefore, Article 254 proviso was made applicable. Learned Senior Counsel has submitted that such a decision would have no effect where the repugnancy is between the provision made pursuant to Union List by the Parliament and under the Concurrent List by the State.

48. In (1999) 7 SCC 120 (DR. PREETI SRIVASTAVA AND ANOTHER v. STATE OF M.P. AND OTHERS), the question was whether it was open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category. While considering the question of entrance examination for postgraduate courses and qualifying marks, it was observed:-

> "27.When a common entrance examination is held for admission to postgraduate medical courses, it is important that passing marks or minimum qualifying marks are prescribed for the examination. It was, however, contended before us by learned counsel appearing for the State of Madhya Pradesh that there is no need to prescribe any minimum qualifying marks in the common entrance examination. Because all the candidates who appear for the common entrance examination have passed the MBBS Examination which is an essential prerequisite for admission to postgraduate medical courses. PGMEE is merely for screening the eligible candidates.
>
> 28. This argument ignores the reasons underlying the need for a common entrance examination for postgraduate medical courses in a State. There may be several universities in a State which conduct MBBS courses. The courses of study may not be uniform. The quality of teaching may not be uniform. The standard of assessment at the MBBS Examination also may not be uniform in the different universities. With the result that in some of the better universities which apply more strict tests for evaluating the performance of students, a higher standard of performance is

required for getting the passing marks in the MBBS Examination. Similarly, a higher standard of performance may be required for getting higher marks than in other universities. Some universities may assess the students liberally with the result that the candidates with lesser knowledge may be able to secure passing marks in the MBBS Examination; while it may also be easier for candidates to secure marks at the higher level. 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 specialised 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 specialised education and the need to provide for some room for the backward even at the stage of specialised postgraduate education which is one step below the superspecialities."

(Emphasis added)

While considering the power of the State to control admissions to the postgraduate courses in Medicine, after referring to entry 66 in List I and entry 25 in List III, it was observed:-

"35. . . . 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 exclusively 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 of 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."

49. The above observation makes it clear that standard laid down by Union of India comes under entry 66 and hence cannot be adversely affected, but Centre can legislate on admission criteria and subject to Article 254, the State can also legislate on matters not coming within Entry 66 List I. It was further observed:-

36. It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;
(2) a proper syllabus designed to achieve a high level of education in the given span of time; (3) the student-teacher ratio;
(4) the ratio between the students and the hospital beds available to each student;
(5) the calibre of the students admitted to the institution;
(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;
(7) adequate accommodation for the college and the attached hospital; and
(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged.

. . .

39. The respondents have emphasised the observation that admission has to be made by those who are in control of the colleges. But, the question is, on what basis? Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some of the judgments, the words "eligibility" and "qualification" have been used interchangeably, and in some cases a distinction has been made between the two words — "eligibility" connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while "qualifications" connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down."

. . .

41. In State of A.P. v. Lavu Narendranath this Court considered the validity of a test held by the State Government for admission to medical colleges in the State of Andhra Pradesh. The Andhra University Act, 1926 prescribed the minimum qualification of passing HSC, PUC, ISC etc. examinations for entry into a higher course of study. The Act, however, did not make it incumbent upon the Government to make their selection on the basis of the marks obtained by the candidates at these qualifying examinations. Since the seats for the MBBS course were limited, the Government, which ran the medical colleges, had a right to make a selection out of the large number of candidates who had passed HSC, PUC or other prescribed examinations. For this purpose the State Government prescribed an entrance test of its own and also prescribed a minimum 50% of marks at the qualifying examination of HSC, ISC, PUC etc. for eligibility to appear at the entrance test. The Court said that merely because the Government supplemented the eligibility rules by a written test in the subjects with which the candidates were already familiar, there was nothing unfair in the test prescribed. Nor did the test militate against the powers of Parliament under Entry 66 of List I. Entry 66 List I is not relatable to a screening test prescribed by the Government or by a university for selection of students from out of a large number applying for admission to a particular course of study.

42. Therefore, this Court considered the entrance test held by the State in that case as not violating Entry 66 of List I

because the statutory provisions of the Andhra University Act were also complied with and the test was not inconsistent with those provisions. Secondly, in that case the Court viewed the test as not in substitution of HSC, PUC, ISC or other such examination, but in addition to it, for the purpose of proper selection from out of a large number of students who had applied."

While referring to the decision of the Supreme Court in (1981)4 SCC 296 (STATE OF MADHYA PRADESH v. NIVEDITA JAIN) to the effect that Entry 66 of List I would not apply to selection of candidates for admission to the medical colleges because standards would come in after the students were admitted and further that Regulation II of the regulations for admission to MBBS courses frame by the Indian Medical Council, was only recommendatory, it was observed:-

"46. . . . But we cannot agree with the observations made in that judgment to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates. For reasons which we have explained earlier, the criteria for the selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges. We cannot agree with the proposition that prescribing no minimum qualifying marks for admission for the Scheduled Castes and the Scheduled Tribes would not have an impact on the standard of education in the medical colleges. Of course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority."

Similarly the Court considered (1994) 4 SCC 401 (AJAY KUMAR SINGH V. STATE OF BIHAR) by following Nivedita Jain case and observed that "Entry 66 in List does not take in the selection of candidates or regulation of admission to institutes of higher education because standards come into the picture after admissions are made" was specifically dissented as apparent from paragraph 47. Thus, in paragraph 48, the Constitution Bench specifically disapproved the decision in Ajay Kumar Singh, Nivedita Jain cases and in (1997) 6 SCC 283 and observed:-

"48. ... This reasoning cannot be accepted. The final pass marks in an examination indicate that the candidate possesses the minimum requisite knowledge for passing the examination. A pass mark is not a guarantee of excellence. There is a great deal of difference between a person who qualifies with the minimum passing

marks and a person who qualifies with high marks. If excellence is to be promoted at postgraduate levels, the candidates qualifying should be able to secure good marks while qualifying. It may be that if the final examination standard itself is high, even a candidate with pass marks would have a reasonable standard. Basically, there is no single test for determining standards. It is the result of a sum total of all the inputs — calibre of students, calibre of teachers, teaching facilities, hospital facilities, standard of examinations etc. that will guarantee proper standards at the stage of exit. We, therefore, disagree with the reasoning and conclusion in Ajay Kumar Singh v. State of Bihar and Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan."

It was further observed :-

"52. Mr Salve, learned counsel appearing for the Medical Council of India has, therefore, rightly submitted that under the Indian Medical Council Act of 1956 the Indian Medical Council is empowered to prescribe, inter alia, standards of postgraduate medical education. In the exercise of its powers under Section 20 read with Section 33 the Indian Medical Council has framed regulations which govern postgraduate medical education. These regulations, therefore, are binding and the States cannot, in the exercise of power under Entry 25 of List III, make rules and regulations which are in conflict with or adversely impinge upon the regulations framed by the Medical Council of India for postgraduate medical education. Since the standards laid down are in the exercise of the power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government. The power of the States under Entry 25 of List III is subject to Entry 66 of List I.

53. Secondly, it is not the exclusive power of the State to frame rules and regulations pertaining to education since the subject is in the Concurrent List. Therefore, any power exercised by the State in the area of education under Entry 25 of List III will also be subject to any existing relevant provisions made in that connection by the Union Government subject, of course, to Article 254."

Ultimately in paragraph 62, it was observed :-

"62. In the premises, we agree with the reasoning and conclusion in Dr Sadhna Devi v. State of U.P. 2 and we overrule the reasoning and conclusions in Ajay Kumar Singh v. State of Bihar 1 and Post Graduate Institute of Medical Education & Research v. K.L. Narasimhan 3 . To conclude:

1. We have not examined the question whether reservations are permissible at the postgraduate level of medical education.

2. A common entrance examination envisaged under the regulations framed by the Medical Council of India for postgraduate medical education requires fixing of minimum qualifying marks for passing the examination since it is not a mere screening test.

3. Whether lower minimum qualifying marks for the reserved category candidates can be prescribed at the postgraduate level of medical education is a question which must be decided by the Medical Council of India since it affects the standards of postgraduate medical education. Even if minimum qualifying marks can be lowered for the reserved category candidates, there cannot be a wide disparity between the minimum qualifying marks for the reserved category candidates and the minimum qualifying marks for the general category candidates at this level. The percentage of 20% for the reserved category and 45% for the general category is not permissible under Article 15(4), the same being unreasonable at the postgraduate level and contrary to the public interest.

4. At the level of admission to the superspeciality courses, no special provisions are permissible, they being contrary to the national interest. Merit alone can be the basis of selection. "

50. Learned Addl. Solicitor General has submitted that the observations made by the aforesaid Constitution Bench in the context of admission to postgraduate courses in Medical Colleges can not be made the basis for coming to a similar conclusion for admission to MBBS Course. Such a submission appears to be too simplistic as well as very wide. The test is not whether t he provision is applicable only to post graduate level or super speciality level. The test is whether the State law adversely affects "standards and co-ordination" in higher education or technical institution.

51. In BHARATI VIDYAPEETH (DEEMED UNIVERSITY) AND ANOTHER v. STATE OF MAHARASHTRA AND OTHER) it was observed:-

"16. It is now settled position in law that within the concepts of coordination and determination of standards in institutions for higher education or research and scientific and technical institutions, the entire gamut of admission will fall. Therefore, if any aspect of admission of students in colleges would fall within Entry 66 it necessarily stands excluded as has been held in Gujarat University case 1 . After examining the power of the State to prescribe medium of instruction in institutions for higher education it is stated in that decision as follows: (AIR p. 715, para 23)

"Item 25 of the Concurrent List confers power upon the Union Parliament and the State Legislatures to enact legislation with respect to 'vocational and technical

training of labour'. It is manifest that the extensive power vested in the Provincial Legislatures to legislate with respect to higher, scientific and technical education and vocational and technical training of labour, under the Government of India Act is under the Constitution controlled by the five items in List I and List III mentioned in I term 11 of List II. 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." 17. If the power to legislate in regard to those aspects are entirely carved out of the subject of education and vested in Parliament even at a time when "education" fell under List II, we find no reason now not to accept the arguments advanced on behalf of the appellant that once an institution comes within the scope of Entry 66 of List I, it falls outside the control of the provisions of Entry 25 of List III."

52. From a combined reading of the provisions contained in Article 246 and Article 254 and the several decisions of the Supreme Court, the following propositions can be culled out:-

(1) A law made by the Parliament in respect of any entry in the Union List will have primacy over the law made by the State in respect of any matter coming within the Concurrent List or the State List.

(2) Article 254 comes into play when the Centre and the State have simultaneous jurisdiction and not exclusive jurisdiction over a particular field of legislation. Thus, if any matter comes within the Union List, such law will have primacy and no question of invocation of Article 254(2) can arise.

(3) Article 254 and particularly 254(2) would come into play only when both the legislations are in respect of any entry in the Concurrent List and not otherwise.

(4) Before 42nd amendment, the subject "education" was in the State List and "co-ordination and determination of standards in higher education" was in the Union List. To the extent any matter was coming within entry 66, the Union had the exclusive jurisdiction and any law made by the State under Entry 11 of List II impinging upon the Central law was invalid. (See Gujarat University case). The position is not changed after 42nd amendment, save and except the fact that education including medical education now comes within the Concurrent List and therefore the Parliament gets a foothold to legislate on such matters, even where those matters were beyond entry 66 before the 42nd Amendment. The 42nd amendment does not have the effect of curtailing the import of Entry 66, List I. On the other hand, it enlarges the field for Central Legislation in respect of education. This is because

the matters which were within exclusive jurisdiction of the State under Entry 11 of List II have become part of Entry 25 in List III (Concurrent List). Moreover, the subjects in Entry 25, List III are still subject to Entry 66 of List I. Therefore, even the State, while legislating on Entry 25, cannot encroach or impinge upon standard in Entry 66. Article 254(2) cannot cure such State Legislation which has the effect of encroaching upon Entry 66 in List I.

(5) Whether any particular legislation is relatable to Entry 66 of List or Entry 25 of List III would obviously depend upon the nature of legislation or the delegated legislation thereunder. If a legislation is relatable to Entry 66 of List I, such legislation being within the exclusive jurisdiction, obviously any law made by the State under Entry 25 List III, will be subject to such Central legislation and if it impinges upon the Central legislation, to that extent, such law would be invalid and to such a case Article 254(2) cannot be applied. If, on the other hand, any law by Parliament is relatable to Entry 25 of List III and a subsequent law is made by the State on same subject and assent is obtained, the State law would be applicable within such State. Where Article 254(2) is not resorted to, the law made by the State under Entry 25 of List III has to give way to the law made by the Parliament under Entry 25 of List III and obviously under Entry 66 of List I.

53. When a Common Entrance Test is prescribed, it may mean merely a method of selection or relatable to laying down of a minimum standard. If it is only the method of selection and not relatable to laying of standard as such, the law is traceable to Entry 25 of List III, but, if it prescribes "standard", it owes its origin to Entry 66 of List I. In the latter case the State cannot make any law impinging upon the law relatable to Entry 66 of List I. However, where such Central law is not relatable to entry 66 of List I but Entry 25 of List III, the State can make law under such Concurrent List and if there is any conflict the State law may prevail provided Article 254(2) is complied with. Even though the State can prescribe higher standard it cannot make a Central Act nugatory (see Adhiyaman's case. Where Common Entrance Test is merely the basis of selection, it may come under Entry 25 of List III rather than under Entry 66 of List I. Where, however, the Central Rule prescribes minimum marks either in qualifying examination or in common entrance test or in both, it is obviously relatable to Entry 66 of List I rather than Entry 25 of List III as it intends to lay down a particular standard. Laying of higher standard by State is possible, but lowering of standard is not possible. Where there is scope for construing that Medical Council of India Regulation, AICTE Regulation prescribe Common Entrance Test for short listing the candidates or method of selection at the graduate level without prescribing any minimum marks, it is possible to construe that such regulation is pursuant to jurisdiction under Entry 25 of List III rather than Entry 66 of List I.

The decision of the High Court in 2005(2) CTC 449 (cited supra) was mainly on account of the fact that the G.O., was issued by the State even though the law/regulation made by the Centre was holding the field and obviously the G.O. issued under Article 162 could not have overridden a

statutory law or even on delegated legislation. In the said decision, there was no equalisation and, therefore, the Bench construed that there was scope for discrimination and, therefore, Article 14 was violated.

In (2006)2 MLJ 382 (cited supra), even though there was statutory legislation, since there was a Central legislation holding the field, obviously the State law had to give way to the Central law in the absence of escape route of Article 254(2). In such decision also the question of equality was in issue because it was obligatory for some of the students to appear in common entrance test whereas other students were exempted from such common entrance test. In both the decisions it was held that holding of Common Entrance Test was mandatory because at that stage the only law applicable was the various regulations such as Medical Council of India, AICTE. The present scenario of a State Law with the protective umbrella under Article 254(2) was not in the frame. It is of course true that in the latter case a State Law had been enacted but that was without the Presidential assent. The Central Law provided for Common Entrance Test as method of selection whereas the State provided for its abolition and therefore obviously there was a conflict between the two and the State Law had to give way to the Central Law. The present question relating to effect of the Presidential assent was not in issue. It is also necessary to emphasize that the specific query as to whether the umbilical chords were tied to Entry 66 of List I or Entry 25 of List III was also not in the horizon. On the other hand, in the former case the Division Bench was conscious of the possibility of enacting a State Law in accordance with Article 254(2).

If common entrance test is considered to be mandatory to be applicable in all circumstances, then there is no scope for making selection as was being hiterto done by combining the marks obtained in the Board examination as well as the Common Entrance test in the ratio of 2:1.

Even though ideally absolute equality is required to be achieved, it is not possible to do so. Even where there is only one examination by one institution, it cannot be said that there is absolute equality because as per necessity the answer papers are to be examined by different examiners, who obviously have different yardstick of marking. Even in the objective type of test, where there is no negative marking, the possibility of ticking a right answer more by accident rather than with the required knowledge looms large. Similarly, even where negative marking is there, the possibility of securing more or less marks due to exigencies cannot be ruled out. It cannot be laid down as a matter of law that any particular method is best suited to find out the relative merit.

54. In Preeti Srivastava's case the Central law had prescribed minimum marks at the entrance examination, which was sought to be lowered. It was therefore observed that the State had no competence to adversely affect the standard which was coming within entry 66.

55. The Common Entrance Test was devised as basis of selection primarily with a view to provide common platform to ensure equality rather than any particular standard to be maintained. It should not be forgotten

that the Medical Council of India Regulation also authorises selection on basis of qualifying marks. It is therefore reasonable to construe that such regulation owes its origin to Entry 25 of List III rather than entry 66 of List I. Such a construction which will have the effect of saving the State Law is more in consonance with the presumption of validity of legislation and the principle that as far as possible efforts to be made to harmonize both the legislations. Abolition of Common Entrance Test does not have the ipso facto effect of lowering the standard. The only effect is that selection is not based on a common platform and therefore vulnerable to the attack based on the principle of equality. This vulnerability has been overcome by equalisation. As a matter of fact, the basic conclusion in both the Division Bench decisions is that without Common Entrance Test the principle of equality would be offended. Even the object of Common Entrance Test (without even a minimum pass mark) is only to ensure equality and not minimum merit. If equality can be achieved upto a reasonable level by any other method, no objection can be sustained. Absolute equality is a myth, even when Common Entrance Test is held because of the inherent possibility of ticking some answers more by guess as in KBC T.V. programme rather than by any conscious selection of the right answer.

56. Learned Senior Counsel appearing for the petitioners has submitted that the method adopted for normalization is arbitrary and opposed to the accepted method adopted by the statisticians.

57. It is no doubt true that for normalization of marks an artificial method has been prescribed by equating the highest mark obtained by the students of various Boards in each subject to the highest mark obtained by a student of State Board in such subjects and by calculating the relative marks obtained by other students in the same subject accordingly as per the formula indicated in the illustration.

58. Learned Senior Counsel has vehemently contended that the method adopted is not appropriate and other better method for equalization or normalization of marks could have been followed. Mr.N. Kannadasan, learned Additional Advocate General, appearing for the State has submitted that such method of normalization has been adopted by established institutes like BITS Pillani and the method can be pursued at least for the present and if any better method is available, the State Government is not averse to idea of adopting any better method in future.

59. There is no doubt that the provision contained in Section 5 of the Act has been incorporated with a view to equalize the marks obtained by different students passing from different Boards or authorities. Even though the basic assumption that the students securing highest marks in a particular subject in the examinations held by different Boards are of equal standard may appear to be artificial, it cannot be said that such conclusion, which forms the basis for normalization, is so arbitrary as requiring interference by the court on the ground of violation of Article 14 of the Constitution of India. It may be that the method suggested or

projected by the Senior Counsel for the petitioners may be better method, but it is not for this Court to sit in judgment over the wisdom of the Legislature in prescribing a particular method. As fairly submitted by the Addl. Advocate General there is always scope for change and improvement in future an the State Government can examine the possibility of incorporating any other method in future by consulting experts in the line. However, we are unable to come to the conclusion that the method presently envisaged is patently arbitrary requiring intervention by the court.

60. The question relating to admission to Architectural course, however, stands on a different footing. As already indicated, the Registrar, Council of Architecture has been impleaded as Respondent No.5 in W.P.Nos.5396, 5396 & 5526 of 2007 and a counter affidavit has been filed by such respondent. In course of hearing, the learned Addl. Solicitor General, who was appearing for Union of India - Respondent No.2, has raised serious objection regarding filing of a separate counter affidavit by the Registrar, Council for Architecture taking a stand, which appears to be different. He has also raised strong objection regarding appearance of the Counsel for Respondent No.5. However, we are not concerned with the appearance of any particular counsel. When a matter of great importance is before the court, it is open to anyone to assist he court in arriving at a proper decision.

61. It is not in dispute that the Architectural education and Architects are governed by the provisions of the Architects Act, 1972. It also cannot be disputed that such Act was enacted inter alia in pursuant to the legislative entry contained in Entry 66 of List I. The Council for Architecture is the Apex body constituted under Section 3 of the said Act. It has got power to frame regulations with prior approval of the Central Government as per Section 45. As per Section 21 of the said Act, the Council has been vested with power to prescribe minimum standards of Architectural education. In exercise of powers conferred under Section 45 (2)(e),(g), (h) & (j) read with Section 21 of the Act, the Council has framed Minimum Standards of Architectural Regulations, 1983 with the prior approval of the Central Government. Regulation 4 of such Regulations prescribes that an aptitude test is required to be undergone by the candidates seeking admission which shall carry a weightage of 50% of the marks. The Regulations further prescribe that as a pre-requisite for admission to architectural course, the candidate must have 50% marks in 10+2 level with mathematics as a compulsory subject. The genesis of such provision prescribing minimum marks at the qualifying examination can only be traced to entry 66 and, therefore, if any law made by the State legislature impinges upon this minimum marks, obviously such legislation would be beyond the competence of the State legislature and to such a situation Article 254(2) cannot have applicability. Similarly the specific provision contained in Regulation 4 to the effect that an aptitude test is mandatory for the candidates seeking admission, which shall carry a weightage of 50% marks, is obviously relatable to entry 66 of List I rather than entry 25 of List II as it purports to lay down a standard. Therefore, to this extent, the provision contained in the State law has to give way.

Even assuming that the Minimum Standards of Architectural Regulations, 1983 relating to architectural course is not relatable to Entry 66 of List I and is relatable to Entry 25 of List II, obviously there is jurisdiction to legislate or frame Regulations as part of subordinate legislation. We have carefully gone through the provisions contained in the State Act. The State Law does not even purport to do away with the Aptitude Test, it only purports to do away with the Common Entrance Test. We have also carefully gone through the objects and reasons and various recommendations on the basis of which the Bill was introduced including the report of the Committee. There is no suggestion anywhere that the aptitude test which was obviously not part of the Common Entrance Test is to be discarded. The holding of aptitude test cannot be said to be in derogation of the present selection method. The present method devised by the State can co-exist with the aptitude test. Strictly speaking it can be said that there is no repugnancy between the two. Therefore, while upholding the validity of the statute, we clarify that for admission to architectural courses, the aptitude test as prescribed in the Regulations has not been dispense with. Even though holding of Common Entrance Test can be dispensed with, holding of aptitude test contemplated in Section 4, must be complied with. The provisions contained in the State Act can be read down to the extent required by observing that selection would be on the basis of the aptitude test which shall carry a weightage of 50% marks and balance 50% of marks would be calculated on the marks obtained at the qualifying examination. It only purports to do away with the Common Entrance Test. It is also made clear that in no event a person who has secured less than 50% marks at the qualifying examination and without mathematics as a compulsory subject would be eligible for such admission. To this extent, the the submission made in W.P.Nos.5396, 5397 and 5526 of 2007 can be upheld. It is hereby clarified that admission to Architectural course should take place in accordance with the Regulations prescribing the Aptitude Test in addition to qualifying test.

62. In the result, all the writ petitions are dismissed subject to the clarification indicated above relating to admission to Architectural Course. No costs.

27-04-2007

With great respect to my brother, I concur supplementing to his view with regard to Common Entrance Test:

Upon hearing the rival claims, the only point for consideration is whether the Government had legislative competence in making a law with reference to the impugned Act under Article 254(2) of the Constitution of India.

2. Point:- The learned counsel for the petitioners contended that in view of clause (ii) of Regulation of Graduate Medical Examination 1997 of Medical Council of India which is subject to item 66 list 1 (Union List) of Schedule 7 of Constitution of India, which is a Central Enactment emphasising the Common Entrance Test, the State Government has no competence to enact a law under Article 254(2) of the Constitution of India abolishing Common Entrance Test, which is the basis for uniform evaluation as there may be various standards at qualifying examinations conducted by different agencies.

3. The learned counsel for the petitioners relied on the following twelve decisions in support of his contention.

1) GUJARAT UNIVERSITY VS KRISHNA RANGANATH MUDALIKA AIR 1963 SC 703
2) PREMCHAND JAIN AND ANOTHER VS R.K.CHHABRA 1984(2)SCC 302
3) OSMANIA UNIVERSITY TEACHERS ASSOCIATION VS STATE OF ANDHRA PRADESH AND ANOTHER 1987(4)SCC 671
4) UNIVERSITY OF DELHI VS RAJSINGH AND OTHERS 1994 SUPP (3) SCC 516
5) STATE OF TAMILNADU VS ADIYAMAN EDUCATIONAL & RESEARCH INSTITUTE 1995 (4) SCC 104
6) RAVINDRA KUMAR RAI VS STATE OF MAHARASHTRA AND OTHERS 1998(3) SCC 183
7) PREETI SRIVASTAVA VS STATE OF MADHYA PRADESH 1999(7)SCC 120
8) BHARATI VIDYAPEETH & OTHERS VS STATE OF MAHARASHTRA AND ANOTHER 2004 (11)SCC 755
9) PROF.YASHPAL AND ANOTHER VS STATE OF CHHATTISGARH AND OTHERS 2005(5) SCC 420
10) PA INAMDAR & OTHERS VS STATE OF MAHARASHTRA AND OTHERS 2005(6) SCC 537
11) PRIYADARSHINI VS STATE OF TAMIL NADU 2005(3)CTC 449
12) MINOR NISHANTH RAMESH VS STATE OF TAMILNADU 2006(2)L.W. 1

4. Further the learned counsel for the petitioners emphasised more particularly the last two cases to sustain his claim. The learned counsel for respondents 1 to 4 contended that the State Government is competent in making a law under Article 254(2) of the Constitution of India with reference to item No.25 of list 3 (Concurrent List) of Schedule 7 of the Constitution of India. Further they relied on the finding of the case of PRIYADARSHINI VS STATE OF TAMIL NADU 2005(3)CTC 449 in support of their contention. The respondents counsel also relied on the following decisions in support of their contention.

1. Lingari Obulamma Vs Venkata Reddy and others AIR 1979 SC 848
2. State of Tamil Nadu and another Vs S.V.Bratheep (Minor) and others (2004) 4 SCC 513

3. Shiv Kumari Devendra gha Vs Ramajor Shitla Prasad ojha and others (1997) 2 SCC 452

4. Government of Andhra Pradesh and another Vs J.B.Educational Society and another (2005) 3 SCC 212

5. Dr.Preeti Srivastava and another Vs. State of Madhya Pradesh and others (1999) 7 SCC 120

6. The State of Andhra Pradesh and another Vs. Lavu Narendra North and others AIR 1971 SC 2560

7. Premchand Jain Vs R.K.Chhabra AIR 1984 SC 981

8. Prof.Yashpal and another Vs State of Chattisgarh and others 2005(5)SCC 420

9. State of Andhra Pradesh Vs. K.Purushotham Reddy 2003 (9) SC 564

10.Bharathi Vidyapeeth and others Vs. State of Maharashtra and another 2004 (11) SC 755

11. Ravindra kumar Rai vs State of Maharashtra and others 1998 (3) scc 183

12. Gram Panchayat of Village Jamalpur Vs Malwinder Singh and others 1985 (3)SCC 661

13. Kaiser-I-Hind Pvt Ltd and another Vs. National Textile Corporation (Maharashtra North) and others 2002 (8) SCC 182 (192)

14. Islamic Academy of Education and another Vs State of Karnataka and others 2003(6) SCC 697

15. Union of India Vs Chajju Ram and others 2003(5) SCC 568

16. Balwant Singh and another Vs Daulat Singh and others 1997 (7) SCC 137
17. Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational and Charitable Trust Vs State of Tamil Nadu and others (1996) 3 SCC 15

18. P.A.Inamdar and others Vs State of Maharashtra and others (2005) 6 SCC 537

19)Government of Orissa Vs Ashok Transport Agency and others (2005) 1 SCC 536

20)Premnath Kaul vs The State of Jammu and Kashmir AIR 1959 SC 749

21)Johney D'couto Vs State of Tamil Nadu AIR 1988 SC 108

22)Santhosh Kumar Sings Vs State of U.P. And others (1996) (2)SCC 45

23)STate of Maharashtra and others Vs. Ravindra Kumar Rai (1999) (2) SCC 48

24)Shri Chander Chinar Bada Adhar Udarin Society and others 1996 (5) SCC 732

25)Minor Nishanth Ramesh Vs The State of Tamil Nadu and others 2006 (2) L.W. (1)

5. Though the decisions cited by the learned counsel for respondents are not similar to the facts on hand, but expressed the legislative competence of the State to pass enactment under Article 254(2) of the Constitution relating to the subject under item 25 of List III (Concurrent List) of Schedule 7 of the Constitution, while incidentally fall under item 66 of List I (Concurrent List) also, not repugnant to it.

6. Before going into the validity of the impugned Act, let me deal with the history of the case on hand. The laudable thinking of the successive Governments is one to dispense with common entrance test as it causes undue hardship and harassment to the socially and economically backward and weaker section of the people hailing from both urban and rural areas. Considering their plight (have not's), the grievance of the successive Government is to put an end to the desire of the privileged people, insisting for common entrance test (CET), who secure more marks and snatch majority of seats in both the Medical and Engineering, as the under privileged/socially and economically backward and weaker section of the people hailing both from urban and rural people could not get sufficient training experience to write Common Entrance Test due to various factors which are obvious, brought the impugned order under challenge.

7. If one traces the history, successive Governments with an object of helping the socially and economically backward and weaker section of the people hailing from urban and rural areas passed several enactments/regulations/order to achieve the object of social justice. But the Governments have failed in one way or the other, due to their faulty approach in enacting Acts/Ordinances/Regulations, instead of enacting flawless Act/Order/Regulation, for which the court cannot be blamed for striking those Ordinances/Acts/Regulations as arbitrary, unjust and ultravires to the Constitution.

8. During 2005, the State Government passed G.O.Ms.No.184 Higher Education (J2)Department dated 9.6.2005 abolishing the Tamil Nadu Professional Courses Entrance Examination 2005, which was challenged by the parties viz., N.Priyadarshini and others. After taking note of various provisions of the Constitution and also after taking note of 1997 Regulations framed by the Medical Council of India, quashing the G.O., in so far as it relates to abolition of Common Entrance Test holding that Common Entrance Test is mandatory. This decision is reported in 2005(3)CTC 449 referable to the decision PRIYADARSHINI VS STATE OF TAMIL NADU 2005(3)CTC 449(No.11) referred by the counsel for the petitioners.

9. Similarly during 2006, the State Government enacted Tamil Nadu Regulation of admission of Professional courses Act 2006 (Tamil Nadu Act 2

of 2006) abolishing Common Entrance Test. This Act was also challenged by the students viz., Minor Nishanth Ramesh etc., on the ground that the said Act is against the Regulations of Graduate Medical Education 1997 of Medical Council of India which emphasises common entrance test to achieve uniform evaluation as there may be variation of standards at qualifying examination conducted by different agencies. The case of the petitioners has been dealt with by a Division Bench of this Court. After taking note of various aspects, found that the State has no power to enact Tamil Nadu Act of 2006 and held that the Act is void, in-operative and unreasonable as the field is occupied by the Central Legislations and the State has no legal competence to enact the impugned Act and it is also not conceived by Article 15(5) of the Constitution of India, ultimately struck down the Act as violative of Principle of equality guaranteed under Article 14 of the Constitution of India. This decision is reported in 2006(2) L.W. 1.

10. At this juncture, it is useful to refer certain observation of the Division Bench of this Court in the 11th decision cited above.

> "....
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> 63. In our opinion, if the State Government wanted to depart from the selection method laid down in the Regulations, it was incumbent on it to pass an Act or Ordinance and then get the assent for it from the President of India under Article 254(2) of the Constitution, but that has not been done. Moreover, even if that had been done it is doubtful whether it would have been a valid law, since it would still be in violation of Article 14 of the Constitution, as already observed above. The impugned G.O. Is not a law which has received the assent of the President of India. As observed by the Supreme Court in State of M.P. Vs. Gopal D.Tirthani, 2003(7)SCC 83 (vide paragraph 26) if the State Government wants to make a departure from the Regulations or wants to carve out an exception to it, then the State Government has to make a representation to the Central Government or Medical Council of India and make out a case of justification consistently with the observation of the Supreme Court in State of Punjab Vs. Dayanand Medical College and Hospital, 2001 (8) SCC 664, wherein it was observed:
>
> "It is not open to the university or the Government to dilute that standard by fixing marks lower than what is set out by the Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme by the Medical Council of India, which is repeatedly stated by the Court to be the repository of the power to prescribe standards in postgraduate studies subject, of course, to the control of the Central Government as envisaged in the Act constitution the council."
>
> .....
>
> 70. However, we would not like to make any final observation

in the matter at this stage as to how the handicap of rural students can be removed since there are many social and economic factors which have to be carefully taken into consideration in this connection and we are not experts in this. In fact the word 'rural' itself has nowadays no clear cut connotation. Rural India today is not the rural India which existed 50 or even 25 years ago. Many rural areas have become semi-urbanised with facilities like electricity, drinking water, roads, pucca houses, pucca buildings, schools, Television, etc., Many areas which were earlier rural areas adjacent to cities have now become part of the cities themselves due to the great expansion of the cities in India and large scale influx of people from rural areas into the cities. The rural countryside of India is not the same which existed or even 50 years ago. There has been significant transformation of the rural countryside in this period. All this requires a detailed study by experts and this Court does not consist of experts in this matter. As already observed above, the State Government after making a detailed study about the rural areas can make recommendations to the Central Government/Medical Council of India or AICTE or Dental Council suggesting amending the Regulations to remove any handicaps of rural students, and such recommendations can be considered by the authorities concerned and suitable amendments made in the Regulation, if the Central Government/medical Council of India/A.I.C.T.E./Dental Council thinks fit, which are legally permissible (reservation of seats for rural students may not be legally permissible in view of the Supreme Court's decision in State of U.P. vs. Pradip Tandon, 1975 (1) SCC 267. However, this Court cannot direct the Government or the authorities to legislate as suggested by Mr.P.P.Rao.

.....

73. At any event, cancellation of the common entrance test was not the correct or valid method to give redress to the rural students. The common entrance test is mandatory in view of the Regulations and the decisions of the Supreme Court (referred to above), and hence cannot be scrapped. What the State Government could have done, if it thought fit, was to have written to the Medical Council (or A.I.C.T.E. Of Dental Council) for amending the Regulations and give some kind of legally permissible help to the rural students so that the handicap could be removed/reduced. What kind of help, could be validly given to the rural students is not for us to decide. The authorities concerned can consult the experts in the matter and after studying the problem consider whether to amend the Regulations as they stand at present. But this Court can certainly not amend the Regulations. This Court should exercise judicial restraint and should not ordinarily interfere with legislative or executive functions as held by a Division Bench of this Court in Rama Muthuramalingam Vs. Dy. Superintendent of Police, 2004(5)CTC 545 : AIR 2005 Mad 1...."

11. In the light of the above finding rendered by a Division Bench of this Court, the State Government acted in a manner with the consultation of the expert in this field to bring down an enactment under Article 254(2) of the Constitution of India for the abolition of the Common Entrance Test. The State Government passed G.O.Ms.No.206 Higher Education (J2) Department dated 7.7.2006 constituting a committee of Education experts to evaluate necessity or otherwise of the common entrance test. The said G.O. is extracted below.

ABSTRACT

Higher Education – Admission to Professional Courses – Abolition of Common Entrance Test – Consitution of Committee of Educational Experts – Orders – Issued.

Higher Education (J2)Department

G.O.(Ms.)No.206 Dated: 7.7.2006

Read:

1)G.O.(Ms.)No.184, Higher Education Department, dated 9.6.2005

2)Government letter No.19868/J2/2005, Higher Education Department, dated 15.9.2005, addressed to Government of India.

3)Tamil Nadu Regulation of Admission in Professional Courses Act, 2006.

4)From the Commissioner of Technical Education, Chennai-25 letter No.21495/J1/2006-1, dated 12.6.2006.

ORDER:

In his address to the Legislative Assembly on 24.5.2006, His Excellency, the Governor of Tamil Nadu has announced that, "the Common Entrance Examination for admission to professional courses has become highly expensive and a source of unnecessary hardship for the students. With a view to ensuring a level playing field to students from rural areas and poor families and those from urban areas, this Government will constitute a Committee of educational experts to recommend suitable measures for abolition of Common Entrance Examination from the academic year 2007-2008".

2. Prior to 1984-1985 admission to professional colleges in Tamil Nadu was done based on the academic marks plus the marks in an interview. The interview was replaced by an entrance test conducted by the Anna University for admission to the professional colleges from the year 1984-1985. This procedure of admitting the students to the professional colleges based on the academic marks plus the marks obtained in the entrance test was followed upto 1996-97 and thereafter as a further expansion of the scheme the Government introduced a Single Window System of admission from the year 1997-1998.

3. In the G.O. first read above, the Government abolished the Common Entrance Test for admission to the undergraduate

professional courses from the year 2005-2006. This order was however struck down by the Madras High Court, for the reason that the Central Regulations, namely Medical Council of India and All India Council for Technical Education prescribed Common Entrance Test for admission to the professional courses. In view of the above judgment of the High Court, the State Government vide letter second read above have written to Government of India requesting them to amend suitably the Medical Council of India and All India Council for Technical Education Regulations so as to enable the State Governments to decide as to the conduct of Common Entrance Test for admission to the professional courses. The Central Regulations were yet to be amended. Therefore, the State Government enacted the Tamil Nadu Regulation of Admission in Professional Courses Act, 2006, where by the Common Entrance Test for the State Board students was abolished. The students belonging to Boards other than the State Board were required to write a Common Entrance Test for admission to Professional Courses. This Act was also struck down by the High Court of Madras as unconstitutional. Therefore admission to the Professional Courses for the year 2006-2007 was ordered to be held as per the procedure followed during the previous years i.e. Based on the Plus 2 marks and the marks in the entrance examination followed by Single Window Counselling System.

4. The State Government are of the view that the Common Entrance Test for admission to professional courses has become highly expensive and a source of unnecessry hardship for the students. With a view to ensuring a level playing field to students from rural areas and those from urban areas, it is felt that the present system of admitting the students to the professional colleges based on the Common Entrance Test may be done away with and admissions may be made based only on the marks obtained by the students in Plus 2 examinations as Plus 2 examination itself should be considered as an entrance test to get admitted to higher level courses. At the same time, the State Government has also taken note of the fact that the Common Entrance Test has been prescribed by the Central Regulations namely Medical Council of India and All India Council for Technical Education, and hence this is an occupied field. If any legislation is enacted by the State Government abolishing the Common Entrance Test there is likelyhood of the Cout striking down the Act, if prior consent of the Government of India is not obtained for enacting such an Act. It has therefore been suggested that all such questions of legal issues need to be addressed before embarking upon any legislative measure for the abolition of Common Entrance Test.

5. The State Government have therefore decided to constitute a committee of educational experts to go through all aspects and recommend to the Government about the measures to be taken for the abolition of Common Entrance Test from the academic year 2007-

2008.

6. The Government accordingly direct that a committee of educational experts with the following be constituted:

S l No	Name and Address	
	Dr.M.Anandakrishnan Former Vice-Chancellor Anna University No.8, Fifth Main Road, Kasthuribai Nagar, Adyar Chennai-600 020 Phone No.24916291	Chairman
	C.Thangamuthu Vice-Chancellor Bharathidasan University, Tiruchirappalli-620 024	Member
	Thiru.K.Parthasarathi Former Law Secretary 30, Ranganathan Street Triplicane, Chennai-5. (Phone No.28549595, 28414486)	Member
	Secretary to Government Law Department Secretariat, Chennai-9	Member

Sl No	Name and Address	
	Secretary to Government Higher Education Department, Secretariat, Chennai-9	Member
	Secretary to Government Health and Family Welfare Department Secretariat, Chennai-9	Member
	Commissioner of Technical Education Chennai-25	Member-Secretary

7. The Committee is requested to make its recommendations to the Government within two months from the date of issue of this order.

8. The Commissioner of Technical Education, Chennai-25, who is the Member-Secretary of the Committee is requested to render necessary assistance to the Committee in all matters.

(By order of the Governor)

K.GANESAN
SECRETARY TO GOVERNMENT

To
The Commissioner of Technical Education, Chennai-25.
The Members of the Committee (through the Commissioner of Technical Education, Chennai-25)
The Secretary to Chief Minister, Chennai-9.
The Senior P.A. To Minister(Higher Education)Chennai-9.
The Secretary to Government, Health and Family Welfare Department, Chennai-9.
The Secretary to Government, Agriculture Department, Chennai-9.
The Secretary to Government, Law Department, Chennai-9.
The Secretary to Government, Animal Husbandry and Fisheries Department, Chennai-9.
The P.S. To Chief Secretary, Chennai-9.
The P.S. To Secretary to Government, Higher Education Department, Chennai-9.

SF/SCs.

//forwarded/by order//

Sd/

Section Officer

11. On the basis of the said G.O., Committee of Educational experts was constituted. The said committee hereinafter called as Dr.M.Ananthakrishnan Committee. The said committee examined the public opinion, favouring the abolition and also for continuing the Common Entrance Test and after analysing various aspects, laid down certain norms for the abolition of the Common Entrance Test. Now let me extract certain portion of the said report as they are relevant to the facts on hand

3.Public Opinion

The Committee decided to undertake direct interactions with the public in two major cities one in Chennai and another in Madurai. In addition, it solicited the views from ths Public through advertisements in English and Tamil Dailies in the form of regular mail and email. The request was also contained in the Official website of The Commissioner of Technical Education, Chennai.

In the interaction sessions held at Vivekananda Auditorium, Anna University, Chennai on August 7, 2006, about 200 persons participated and offered their views. In the session held at Karumuthu Auditorium in Thiagarajar College of Engineering, Madurai on 13th August, 2006, about 190 persons participated and offered their views. In both places the participants consisted of educationists, students, parents, teachers, management of the institutions and the media.

The response received through regular mail and email amounted to a total of about 3000. Of these about 1250 were in favour of the abolition of the CET and about 600 were for retaining it. The rest of the opinions were somewhat indefinite.

3.1.Summary of Public Opinion Favouring Abolition

a. There are very few coaching centre facilities in rural areas compared to urban areas.

b.Since the question paper for the HSE students is entirely different in structure and syllabus from the one for the Entrance Examination, the students were not able to perform well in Entrance Examinations.

c.Students scoring high marks in HSE, tend to score less in Entrance Examination. There are instances where, the students from rural areas getting more than 95% marks in HSE have scored low marks in the Entrance Examination.

d.Entrance Examination creates additional financial burden to the parents.

e.Entrance Examination causes considerable delay in admission to the First year courses.

f.The rural students find the time allotted to the Entrance

Examination inadequate.

3.2.Summary of Public Opinion for continuing the Common Entrance Test

a.Since a large number of students get the same marks in HSE, it will be difficult to rank them without the Entrance Examination.

b.CET contributes to improving the quality of education.

c.There is no need for extra coaching since the syllabus for the HSE and CET are the same.

d.CET helps to identify the really meritorious students.

e.The present system of HSE is not reliable because of unacceptable practices, malpractices in some places and liberal valuation.

6.Implications of Judgments

Firstly, the CET becomes a necessity mainly as a means of determing comparitive merit, while at the same time, not discriminating the students coming from different boards of examinations. Secondly, the regulations prescribed by the Central Statutory bodies such as AICTE, MCI, DCI etc., take precedence over any corresponding state regulations regarding admission procedure.

7.An Alternate Method

Normalization in Lieu of Common Entrance Test

At present the Common Entrance Test (CET) is being adopted as the "only" method for bringing the students of State Board and other boards, following different syllabus and different examinations, into a common comparable score. The CET, however, is not necessarily a fool-proof method of ensuring a complete parity of standards. If the Entrance Test is closer to following a particular board syllabus, the other board students are likely to be at a disadvantage. Moreover, the CET as such causes substantial disadvantage to the rural, Tamil medium and under-privileged students, while the urban, English medium and socially forward sections of students stand to benefit.

Theoretically it is possible, without a CET, to ensure comparable common score even when different boards follow different syllabus and different examinations, Among various Boards of examinations, one may be more liberal than the other; as a result, students of a particular board may feel aggrieved when students of another board get relatively higher marks through liberal valuation.

Thus, by normalizing the Plus Two marks of different Boards, it is quite possible to arrive at a common comparable score and thereby a single rank list for the purpose of admission. The CET can therefore be dispensed with, without attracting any major relative handicap/heartburn to any section of the students. The rural based students could also be saved from the serious deprivation and disadvantage on account of CET. The interests of students from various boards are equally taken care of by normalization. And the students from all Boards, in general,

would be saved from the insurmountable additional burden and mental strain of appearing for CET.

The present trend of many rural/Tamil medium students from under-preivileged sections getting "scared" of CET (and hence not even applying for professional courses) would also slowly disappear, bringing in better and broad-based participation in professional education netting intalents from newer social groups. Over-all quality of inputs into professional programees would largely improve thanks to introduction of normalization method in lieu of CET.

The Committee examined a second approach that is being followed namely, Graduate Aptitude Test for Engingeering (GATE) This procedure of normalization results in rescaled marks obtained by taking into account the highest marks, and the average marks obtained in each subject, and the standard deviation of all the students in the subject. The ranking is done by considering the results of relevant subjects. If any bunching occurs in this procedure, the tie breaking would be done, by adopting different weightages for different subjects, till distinct ranking is obtained. However, this procedure may create consdierable confusion in public mind about the merits of methodology.

Moreover, this system would require all the educational boards, to release their computerized database indicating the mean average score and the standard deviation well in time, which is quite unlikely under present circumstances.

9.RECOMMENDATIONS

Based on the analysis presented above the Committee makes the following recommendation.

1)The Government may undertake immediate steps to eliminate the CET by following the required procedures to satisfy the legal pronouncements of the various Courts.

2)The Government may pass a Bill indicating the need for elimination of CET in the interest of Social Justice and protection of vulnerable student population.

3)The Bill should explicitly propose the Normalization Process for ensuring equality of opportunities for admission to the students from different Boards.

4)The Government may obtain the assent of the President of India, in order to satisfy the requirement of concurrence from statutory authorities.

5)Thereafter details of the new procedure may be announced as early as possible, so as o allow sufficient time between the announcement of the new policy and following admission process.

6)It would be necessary for the Government to ensure the credibility of the HSE by eliminating the scope for malpractices and other unacceptable practices, Since the HSE scores will become the sole basis for admissions. It is recommended that the Government may constitute a high power supervisory committee to

facilitate all aspects of HSE examination from the beginning to the end and to secure the cooperation of the district officials and law enforcing authorities.

10.CONCLUSIONS

There is a substantial evidence that significant majority of the concerned people of Tamil nadu considered CET is an additional and unnecessary burden on a large number of students aspiring for admission to professional courses. They favour the elimination on account of sever disadvantages encountered by different vulnerable sections of the student population such as rural households, Tamil medium and underprivileged categories. This is amply established from the analysis of the data presented in this report.

At the same time, any steps to eliminate the CET, should ensure the equality of opportunity of the students coming from different boards, seeking admission for professional courses in Tamil Nadu. This is necessary, primarily to avoid appearance of undue advantage to any group over the others in the process of selection for admission. It is also necessary to satisfy the Central statutory regulatory authorities that the procedure adopted by Tamil Nadu after elimination of CET is rational to determine relative merits of students based on normalization of HSE scores from any board.

The Committee is of the view that these conditions can be fulfilled by

a)Adopting equalization of scores through normalization process with appropriate modifications for ensuring tie breaking.

b)By passing a Bill for abolition of CET indicating the normalization and

c. By obtaining the President's assent.

The present system should be discontinued only after the above steps are taken well ahead of the commencement of admission process."

12. Before submitting the report to the Government, the committee taken note of the implication of the judgment rendered in

1)Islamic Academy of Education and another Vs State of Karnataka and others (2003) 6 SCC 697

2)P.A.Inamdar vs State of Maharashtra (AIR 2005 SC 3226)

3)Pai Foundation Case (2002) 8 SCC 481

4)Unni Krishnan's case (1993) 4 SCC 111

13. The said report was analysed by the State Government in detail and presented it in the Tamil Nadu Legislative Assembly, to pass a Bill on the basis of the report and directions were obtained to get assent of the President of India. The views of the Government in this regard is as follows:-

STATEMENT OF OBJECTS AND REASONS

The Government of Tamil Nadu has been receiving representations from the parents, teachers, educationists, social

activists and the student community, requesting for abolition of the Common Entrance Test for admission to professional courses.

2.The bulk of the students appearing for the Common Entrance Test come from rural areas and facilities for them to access coaching classes to equip themselves for the Common Entrance Test are not available due to non-availability of such coaching centres in their locality and also due to paucity of funds and economic circumstances in which those students live. It has been opined that the Common Entrance Test has become a traumatic experience for parents and children as it appears to determine at one stroke the future of the child. The Higher Secondary Examination (Plus Two) itself is a serious examination of merit casting a high burden on students and is itself verify an entrance test to get admitted to higher level course and admission to professional courses. This obviates the need for any separate common entrance test thereafter, as it is an additional burden on the students.

3.In His address to the Tamil nadu Legislative Assembly on 24.5.2006, His Excellency, the Governor of Tamil Nadu has announced that,-

'the common Entrance Examination for admission to professional Courses has become highly expensive and a source of unnecessary hardship for the students. With a view to ensuring a level playing field to students from rural areas and poor families and those from urban areas, this Government will constitute a Committee of educational experts to recommend suitable measures for abolition of Common Entrance Examination from the academic year 2007-2008."

Accordingly the Government constituted a committee of educational experts under the Chairmanship of Dr.M.Ananthakrishnan, former Vice-Chancellor, Anna University vide G.O.(Ms.)No.206, Higher Education, dated 7.7.2006. The Committee submitted its report to the Government on 13.11.2006. The Committee, has made, among other things, the following recommendations:-

(i)The Government may undertake immediate steps to eliminate the Common Entrance Test.

(ii)The Government may pass a Bill indicating the need for elimination of Common Entrance Test in the interest of Social Justice and protection of vulnerable student population;

(iii)The Bill should explicitly propose the Normalization Process for ensuring equality of opportunities for admission to the students from different Boards.

4. The Government have decided to accept the recommendations of the Committee and to bring out a legislation for the said purpose.

5. The Bill seeks to give effect to the above decision.

Dr.K.Ponmudi,
Minister for Higher Education.

14. On the basis of such recommendation, Bill 39 of 2006 was presented in the legislative assembly. The said bill is extracted below:-

"Under rule 130 of the Tamil Nadu Legislative Assembly Rules, the following Bill which was introduced in the Legislative Assembly of the State of Tamil Nadu on 6th December 2006 is published together with Statement of objects and reasons for general information:-

L.A.BILL NO.39 OF 2006

A Bill to provide for admission to professional degree courses such as Engineering, Medicine, Dental, Agriculture and other allied courses on the basis of marks in the Qualifying examination.

Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-seventh Year of the Republic of India as follows:-

1(1)This Act may be called the Tamil nadu Admission in Profession Educational Institutions Act, 2006.

(2)It shall come into force on such date as the State Government may by notification, appoint.

2. In this Act, unless the context otherwise requires_

(a)"appropriate authority means a University or an authority authorised by the Government to select and allot students for admission in professional educational courses;

(b)"Government" means the State Government.

(c)"Government seats" mean,

(i)all the seats in Government colleges, University colleges and University constituent colleges

(ii)such number of seats in aided professional educational institutions as may be notified by the Government and

(iii)65% of seats in each branch in non-minority unaided professional educational institutions and 50% of the seats in each branch in minority unaided professional educational institutions, in accordance with the consensus arrived at between such professional educational institutions and the Government.

(d)"minority professional educational institution" means the educational institutions recognized or declared as such by the Government, subject to such conditions as may be prescribed;

(e)"professional educational courses" mean

(1) in Medical and Dental institution, the first year of

(i)Bachelor of Medicine and Bachelor of Surgery and

(ii)Bachelor of Dental Surgery.

(2) in Engineering institution, the first year of,

(i)Bachelor of Engineering;

(ii)Bachelor of Technology; and

(iii)Bachelor of Architecture.

And includes any other professional educational courses at undergraduate and postgraduate level, as may be notified by the Government in this behalf;

(f) professional educational institution means any college or school or an institute by whatever name called, including minority professional educational institutions, conducting professional

educational courses leading to the award of a degree, whatever name called, approved or recognised by the competent statutory body and affiliated to an University;

(g)"qualifying examination" means the examination conducted by the Board of Secondary Education, Government of Tamil Nadu, at the Higher Secondary (Plus Two) level or any equivalent examination conducted by the Central Board of Secondary Examination or any other State Board of any other State or any other Authority;

(h)'relevant subjects' mean the subjects as may be prescribed for admission to each professional educational courses.

(i)"State Board" means the Board of Secondary Education, Government of Tamil Nadu.

(j)"University" means the University established or incorporated by an Act of the State Legislature.

(k)the expression Non-Resident Indian shall have the meaning assigned to it in the Income Tax Act 1961.

3. Notwithstanding anything contained in any relevant law or any rules, regulation or by laws made thereunder admission to every Government seat in every professional educational institution shall be made, by the appropriate authority, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

4. (1) Notwithstanding anything contained in any relevant law or any rules, regulation or by laws made thereunder admission to seats, excluding the seats referred to in item (iii) of clause (c) of section 2, in all unaided professional educational institutions shall be made by the consortium of unaided professional educational institutions approved by the Government or by any Authority authorised by the Government, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

(2)Notwithstanding anything contained in sub-section(1), any unaided professional educational institution may fill up seats equivalent to 15 per cent of the total sanctioned strength, in each branch, by the candidates belonging to the Non-Resident Indians, in accordance with such guidelines as may be issued by the Government from time to time.

5.(1)The marks obtained by the students in the relevant subjects in the qualifying examination conducted by various Boards or Authority shall be equated with the marks obtained by the students in the same subjects in the qualifying examination conducted by the State Board, by adopting the method of normalization.

Explanation:- Under the method of normalization, the highest mark obtained by the students of various Boards in each subject shall be equated to the highest mart obtained by the students of State Board in that subject and the relative marks obtained by other students in that subject shall be determined accordingly.

Illustration:- If the highest marks secured by the student of State Board in Physics is 100 and the highest mark secured by a student of any other Board in the same subject is 90, both the highest marks will be considered to be equal to 100. If a student of the other Board secures 60 marks in Physics when the first mark in Physics in the same Board is 90, the 60 marks will be considered to be equal to 66.66 marks as arrived at below:-

$$\frac{100 \times 60}{90} = 66.66\%$$

(2)After normalization of marks in the relevant subjects in the qualifying examination conducted by different Boards, the qualified students of different Boards shall be merged into a common merit list.

(3)in cases where more than one student have got the same marks in the common merit list, the inter-se merit among such students shall be determined in such manner as may prescribed.

(4)The appropriate authority and the consortium of unaided professional educational institution shall prepare the rank lists for admission of students to the seats referred in section 3 and section 4, respectively and allot students through centralised counselling.

6. Admission into every professional educational institution other than minority professional educational institution shall be made following the reservation as per law in force.

7. Notwithstanding anything contained in any other law in force, any admission made in violation of the provisions of this Act or the rules made thereunder shall be invalid.

8. Any complaint on the admission of students in the unaided professional educational institutions shall be inquired into by the appropriate authority which shall after obtaining the evidence and the explanation of the management of the unaided professional educational institution concerned, forward appropriate recommendations to the government.

9. (1)whoever contravenes the provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to five lakhs rupees.

(2)The Government may, if they are satisfied that any institution has violated any of the provisions of this Act, recommend to the concerned University or Statutory body for withdrawal of affiliation or recognition of such institution or for any other courses of action as they deem fit.

10(1)The Government may make rules for carrying out the purposes of this Act.

(2)All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b)All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into

force on the day on which they are so published.

(3)Every rule made or notification or order issued under this Act shall, as soon as possible, after, it is made or issued, be placed on the Table of the Legislative Assembly, and if, before the expiry of the session in which it is so placed or the next session, the Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall be thereafter have effect only in such modified forum or be of no effect, as the case may be, so , however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

11. No suit, prosecution or other legal proceedings shall lie against the appropriate authority, Government or its Officers for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

12. The Government, may, from time to time, issue such directions, as it may deem fit for giving effect to the provisions of this Act.

13. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act."

15. Then the said bill was presented for President assent. The president has also accorded permission in this regard. The Act was notified in the Government Gazette on 8th March 2007. The same is enumerated below:-

"The following Act of the Tamil nadu Legislative Assembly received the assent of the President on the 3rd march 2007 and is hereby published for general information:-

Act No. 3 of 2007

An Act to provide for admission to professional degree courses such as Engineering, Medicine, Dental, Agriculture and other allied courses on the basis of marks in the Qualifying examination.

Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-seventh Year of the Republic of India as follows:-

1(1)This Act may be called the Tamil nadu Admission in Profession Educational Institutions Act, 2006.

(2)It shall come into force on such date as the State Government may by notification, appoint.

2. In this Act, unless the context otherwise requires_

(a)"appropriate authority means a University or an authority authorised by the Government to select and allot students for

admission in professional educational courses;

(b)"Government" means the State Government.

(c)"Government seats" mean,

(i)all the seats in Government colleges, University colleges and University constituent colleges

(ii)such number of seats in aided professional educational institutions as may be notified by the Government and

(iii)65% of seats in each branch in non-minority unaided professional educational institutions and 50% of the seats in each branch in minority unaided professional educational institutions, in accordance with the consensus arrived at between such professional educational institutions and the Government.

(d)"minority professional educational institution" means the educational institutions recognized or declared as such by the Government, subject to such conditions as may be prescribed;

(e)"professional educational courses" mean

(1) in Medical and Dental institution, the first year of

(i)Bachelor of Medicine and Bachelor of Surgery and

(ii)Bachelor of Dental Surgery.

(2) in Engineering institution, the first year of,

(i)Bachelor of Engineering;

(ii)Bachelor of Technology; and

(iii)Bachelor of Architecture.

And includes any other professional educational courses at undergraduate and postgraduate level, as may be notified by the Government in this behalf;

(f) professional educational institution means any college or school or an institute by whatever name called, including minority professional educational institutions, conducting professional educational courses leading to the award of a degree, whatever name called, approved or recognised by the competent statutory body and affiliated to an University;

(g)"qualifying examination" means the examination conducted by the Board of Secondary Education, Government of Tamil Nadu, at the Higher Secondary (Plus Two) level or any equivalent examination conducted by the Central Board of Secondary Examination or any other State Board of any other State or any other Authority;

(h)'relevant subjects' mean the subjects as may be prescribed for admission to each professional educational courses.

(i)"State Board" means the Board of Secondary Education, Government of Tamil Nadu.

(j)"University" means the University established or incorporated by an Act of the State Legislature.

(k)the expression Non-Resident Indian shall have the meaning assigned to it in the Income Tax Act 1961.

3. Notwithstanding anything contained in any relevant law or any rules, regulation or by laws made thereunder admission to every Government seat in every professional educational

institution shall be made, by the appropriate authority, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

4. (1) Notwithstanding anything contained in any relevant law or any rules, regulation or by laws made thereunder admission to seats, excluding the seats referred to in item (iii) of clause (c) of section 2, in all unaided professional educational institutions shall be made by the consortium of unaided professional educational institutions approved by the Government or by any Authority authorised by the Government, on the basis of the marks obtained by a student in the relevant subjects, in the qualifying examination.

(2)Notwithstanding anything contained in sub-section(1), any unaided professional educational institution may fill up seats equivalent to 15 per cent of the total sanctioned strength, in each branch, by the candidates belonging to the Non-Resident Indians, in accordance with such guidelines as may be issued by the Government from time to time.

5.(1)The marks obtained by the students in the relevant subjects in the qualifying examination conducted by various Boards or Authority shall be equated with the marks obtained by the students in the same subjects in the qualifying examination conducted by the State Board, by adopting the method of normalization.

Explanation:- Under the method of normalization, the highest mark obtained by the students of various Boards in each subject shall be equated to the highest mart obtained by the students of State Board in that subject and the relative marks obtained by other students in that subject shall be determined accordingly.

Illustration:- If the highest marks secured by the student of State Board in Physics is 100 and the highest mark secured by a student of any other Board in the same subject is 90, both the highest marks will be considered to be equal to 100. If a student of the other Board secures 60 marks in Physics when the first mark in Physics in the same Board is 90, the 60 marks will be considered to be equal to 66.66 marks as arrived at below:-

$$\frac{100 \times 60}{90} = 66.66\%$$

(2)After normalization of marks in the relevant subjects in the qualifying examination conducted by different Boards, the qualified students of different Boards shall be merged into a common merit list.

(3)in cases where more than one student have got the same marks in the common merit list, the inter-se merit among such students shall be determined in such manner as may prescribed.

(4)The appropriate authority and the consortium of unaided professional educational institution shall prepare the rank lists for admission of students to the seats referred in section 3 and section 4, respectively and allot students through centralised

counselling.

6. Admission into every professional educational institution other than minority professional educational institution shall be made following the reservation as per law in force.

7. Notwithstanding anything contained in any other law in force, any admission made in violation of the provisions of this Act or the rules made thereunder shall be invalid.

8. Any complaint on the admission of students in the unaided professional educational institutions shall be inquired into by the appropriate authority which shall after obtaining the evidence and the explanation of the management of the unaided professional educational institution concerned, forward appropriate recommendations to the government.

9. (1)whoever contravenes the provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to five lakhs rupees.

(2)The Government may, if they are satisfied that any institution has violated any of the provisions of this Act, recommend to the concerned University or Statutory body for withdrawal of affiliation or recognition of such institution or for any other courses of action as they deem fit.

10(1)The Government may make rules for carrying out the purposes of this Act.

(2)All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(b)All notifications issued under this Act shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are so published.

(3)Every rule made or notification or order issued under this Act shall, as soon as possible, after, it is made or issued, be placed on the Table of the Legislative Assembly, and if, before the expiry of the session in which it is so placed or the next session, the Assembly decides that the rule or notification or order should not be made or issued, the rule or notification or order shall be thereafter have effect only in such modified forum or be of no effect, as the case may be, so , however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification or order.

11. No suit, prosecution or other legal proceedings shall lie against the appropriate authority, Government or its Officers for anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

12. The Government, may, from time to time, issue such directions, as it may deem fit for giving effect to the provisions of this Act.

13. If any difficulty arises in giving effect to the

provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act."

This enactment is not under challenge by letter and spirit by any one.

16. As per Gazette publication dated 6.3.2007, Act 3 of 2007 came into force with effect from 7th March 2007. At last, the wisdom dawn on the Government taking a cue from the finding rendered in 11th decision cited above, cautiously handled the matter, enacted the impugned Act, after getting the presidential assent incorporating holiday class under section 13 of the Act. To emphasise this aspect Section 13 of the Act is reproduced once again:

13. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for removing the difficulty.

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act."

17. The said holiday class has been introduced is to cure any deficiency pointed out during the time of implementation.

18. In fact, on earlier occasion one in the year 2005 and another in the year 2006, two enactments passed abolishing the Common Entrance Test as the Common Entrance Test, causes prejudice to the socially and economically backward and weaker students hailing from both rural and urban area. Due to some laches, both the enactments were quashed. But the fact remains that the Governments intention was to abolish the Common Entrance Test.

19. The Pattali Makkal Katchi and Dravida Kazhagam filed impleading applications supporting the cause of the Government in the abolition of Common Entrance Test for helping the socially and economically backward and weaker section of students hailing from both rural and urban area.

20. Apart from that, 120 students have also filed impleading petition in support of the case of the present Government in this regard.

21. It is worthy to note that no political party filed any application objecting to the abolition of Common Entrance Test. So it is apparent that political parties in entirety in Tamil Nadu welcome the policy of the Government in the abolition of Common Entrance Test. Only few persons like the petitioner herein oppose the abolition of Common Entrance Test. Their grievance cannot outwit the student community as a whole who have welcomed the abolition of Common Entrance Test.

22. The State Government is the mouth piece of the general public. Whatever said and done by the Government is deemed to have been said and done by the general public. Constitution is of the people, by the people and for the people. Constitution reflects the will of the people.

23. The facts on hand would show that general public welcome the abolition of the Common Entrance Test. The will of the people is the will of the Constitution. Legislature is one of the limb of the Constitution. Therefore, implementing the desire of the people is the paramount duty of the Government which is a onerous task. The Judiciary is another limb of the constitution. The judiciary can interpret the law or scrutinise the law to find out whether it is arbitrary or otherwise of the Constitution. The court cannot make a law or abridge the law enacted law by a legislature.

24. The policy of the Government is for the abolition of the Common Entrance Test. Political parties are also supporting the present impugned order in the abolition of Common Entrance Test. The above fact would prove that the equity is not in favour of the petitioner as the impugned act has been given effect to, after obtaining the President assent which is beneficial to socially and economically backward and weaker section of the students hailing from both urban and rural areas. The object of this Act is to render social justice. So, I am of the considered view that the petitioner cannot sustain his claim as the equity is not in his favour.

25. The next point for consideration is whether the petitioner can sustain his claim legally. Mr.K.M.Vijayan, learned counsel for the petitioner submitted that since in the State of Tamil Nadu, there is more than one University/Board/Examining Body conducting the qualifying class 12 examination (+2 Examination) a Common Entrance Test is mandatory. He further submitted that there are several examining boards/bodies in the state of Tamil Nadu. (1) State Board, (2) Central Board of Secondary Education and (3)ICSE Board and hence under the Regulations, it is incumbent on the State Government to hold a Common Entrance Test. Though the learned counsel for the petitioner referred the above said 12 decisions, strongly relied on decision No.11 and 12 to sustain his contention.

26. Mr.R.Viduthalai, learned Advocate-General for the first respondent, Mr.V.T.Gopalan, learned Additional Solicitor General of India for the second respondent,Mr.R.Gandhi, learned Senior counsel for the third respondent and Mr.N.Muralikumar, Additional Central Government Standing Counsel for the fourth respondent relied on several decisions and also the decisions cited by the learned counsel for the petitioners more particularly with reference to decision No.11 and 12 (PRIYADARSHINI VS STATE OF TAMIL NADU 2005(3)CTC 449) and (MINOR NISHANTH RAMESH VS STATE OF TAMILNADU 2006(2)L.W.) and submitted that the impugned Act of abolition of Common Entrance Test is not in any way repugnant to Entry 66 of list 1 of Schedule 7 of the Constitution of India as the said impugned order enacted under item 25 of list 3 (concurrent list of schedule 7) after obtaining assent from the president of

India.

27. In this context, let us deal with the relevant provisions touching the present issue. Article 245 (1) and (2)of the Constitution reads as follows:-

> 245. Extent of laws made by Parliament and by the Legislatures of States:-
>
> (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
>
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

28. Item 66 of list 1 (Union list) of 7th Schedule reads as follows:-

> "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institution"
>
> Item 25 of list 3 (concurrent list of Schedule 7) reads as follows:-
>
> "Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List 1; vocational and technical training of labour"
>
> Clause (i),(ii),(iii)and (iV) of Regulations of Graduate Medical Education 1997 of Medical Council of India is enumerated as follows:-
>
> 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 one 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."

29. The learned counsel for the petitioner takes us to the relevant portion of item 25 of list 3 concurrent list of schedule 7 viz., "Subject to the provisions entries 63, 64, 65 and 66 of list 1" submitted that the state Government has no legislative competence to pass any Act with reference to the subject falling under item 66 of list 1 Union list of Schedule 7. Learned counsel for the respondents/Government drew our attention to Article 254 Clause (1) and (2) and contended that the state government has legislative competence to enact law and item 25 of list 3(concurrent list of schedule 7) as the same has wider jurisdiction including the subjects

referred under item 66 of list 1 (Union List).

30. Now I have to find out whether the state Government has got legislative competency to pass the impugned order. At this juncture, it is useful to refer the finding of the Priyadarshini's case (Priyadarshini vs. The Secretary to Government 2005 (3) CTC 449) wherein it is held in paragraphs 63 as follows:-

> "63. In our opinion, if the State Government wanted to depart from the selection method laid down in the Regulations, it was incumbent on it to pass an Act or Ordinance and then get the assent for it from the President of India under Article 254(2)of the Constitution, but that has not been done. Moreover, even if that had been done it is doubtful whether it would have been a valid law, since it would still be in violation of Article 14 of the Constitution, as already observed above. The impugned G.O. Is not a law which has received the assent of the President of India. As observed by the Supreme court in State of M.P. Vs. Gopal D.Tirthani, 2003(7) SCC 83 (vide paragraph 26), if the State Government wants to make a departure from the Regulations or wants to carve out an exception to it, then the State Government has to make a representation to the Central Government or Medical Council of India and make out a case of justification consistently with the observation of the Supreme Court in State of Punjab Vs. Dayanand Medical College and Hospital, 2001 (8) SCC 664, wherein it was observed:
>
> "It is not open to the university or the Government to dilute that standard by fixing marks lower than what is set out by the Medical Council of India. If they had any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard. The State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Regulations framed by the Medical Council of India, which is repeatedly stated by this Court to be the repository of the power to prescribe standards in postgraduate studies subject, of course, to the control of the Central Government as envisaged in the Act constitution the Council".

35. From the observation of the Division Bench of this Court, it is clear that the State Government has competency to pass an Act or Ordinance under section 254(2) of the Constitution and then get the assent from the President of India to give full effect to the Act provided such law is not in violation of Article 14 of the Constitution. The case on hand would show that the State Government passed an Act and obtained assent from the President of India under Article 254(2) of the Constitution of India. There is nothing on record to show that such Act is in violation of Article 14 of the Constitution. Petitioner in his affidavit has not stated anywhere about

the impugned act which was given effect to after getting assent from the President of India under Article 254(2) of Constitution of India is in violation of Article 14 of the Constitution of India.

36. Even at the time of argument, the learned counsel for the petitioner has not stated that this impugned order is in violation of Article 14 of the Constitution. Bearing in mind, the principles laid down by this Court in the above said rulings, I am of the view that the State has got legislative competence to pass an Act under Article 254 (2) of the Constitution of India. However, the learned counsel for the petitioner submitted that such an observation is not in binding nature as it could only be considered as Obiter Dictum.

37. The highly philosophical, laudable, humane, considerate and well founded approach/thinking of Justice Markandey Katju expressed in the Judgment referred above cannot be diluted in an in-humane way by stating that it cannot be "Judge made Law", but at best, can be construed only as Obiter Dictum and cannot be used as a precedent.

38. Law is for the people. People are not for law. So long as the impugned order is not in violation of Article 14 of the Constitution of India, the same can be given effect to though such subject also falls under item 66 of list 1 Schedule 7 of the Constitution.

39. In this context also, I am of the considered view that impugned order is valid and can be given effect to in the State of Tamil Nadu.

40. Now let me find out whether conducting the Common Entrance Test under the said regulation, framed under item 66 of list 1 (Union List) of Schedule 7 of Constitution is mandatory in view of the finding referable to item 11 and 12 of the above said decision.

41. 1)Medical council of India and 2)All India council for Technical Education were not the parties in the said proceedings. They are impleaded as 3 and 4 respondents in this petition to give their opinion. Before getting assent of Bill No.39 of 2006 dated 6.12.2006 from the President of India, the Central Government have followed certain procedures. They obtained informations from various departments concerned in this case. Mr.V.T.Gopalan, learned Assistant Solicitor General of India placed the records containing the information obtained from the various department before obtaining President's assent in this regard.

42. Now let me deal with the two memorandums in this regard:-

I) MOST IMMEDIATE
STATE LEGISLATIONS

F.No.17-2/2007-T.S.I
Government of India
Ministry of Human Resource Development
Department of Higher Education
Technical Section-1

Shastri Bhavan, New Delhi
Dated 15th February, 2007

OFFICE MEMORANDUM

Subject: The Tamil Nadu Admission in Professional Educational Institutions Bill, 2006.

The undersigned is directed to refer to Ministry of Home Affairs OM No.17.01.2007, Judl & PP dated on the subject mentioned above and to furnish the comments of this Departments as follows:

i) The proposed legislation is constitutionally valid because it falls under Entry 25 of the Concurrent List. It does not conflict with the Entry 66 of the Union List as the proposed legislation does not dilute or lower the standards of higher education including technical education.

ii)To the best of our knowledge, there is no Central law governing admissions to the professional educational institutions and there is no question of a conflict with any Central law.

iii)As per the various Supreme Court Judgments, admissions to Professional Educational Institutions should be on the basis of merit. Each State is competent to devise its own procedure for allocation of seats in a fair and transparent manner. It is presumed that the qualifying examinations conducted by the Tamil Nadu Board, CBSE, School Leaving Certificate Examination etc. are conducted in fair and transparent manner.

iv)The Bill envisages, that the marks obtained in the qualifying examination of various Boards will be normalized on the basis of a formula given in the bill. Though AICTE has reservation regarding this formula, such a method has been followed by BMS Pilani for a long time. In the absence of any better statistical method of normalization of marks, we may have no objection to accept the time tested formula of normalization as proposed in the Bill.

v)Sub clause(d) of clause 2 which defines Minority Professional Educational Institutions, could perhaps be made more explicitly consistent with the provisions of Article 30(1) of the Constitution.

vi) Sub clause 2 of clause 4 of the proposed bill reserves 15% of the seats for Non-Resident Indians. In our opinion these seats should be in the supemumerary category, over and above the strength authorized by the competent authorities such as AICTE. The Law Ministry's opinion may be obtained whether such a provision is consistent with the Supreme Court's direction in the P.A.Inamdar matter.

Vii) Clause 2(c)(iii) of the bill defines 65% of seats in each Branch in non-minority unaided professional educational institutions and 50% seats in each branch in minority unaided professional educational institutions as "government seats" in accordance with the consensus arrived at between such professional institutions and the State Government. Further clause 6 of the Bill states that admission into professional educational institutions other than minority professional educational institutions shall be made galloping the reservation as per law in force. It may be pointed out that Article 15(5) of the Constitution exempts the minority professional educational institutions. It is presumed that ...(sick) of the government seats in minority unaided professional education institutions which will be filled by the government, reservation policy would apply. The Ministry of Home Affairs may like to get this matter examined by the Ministry of Law whether the consensus made between the State Government and unaided professional educational institutions, both minority and non-minority is legally bound.

Subject to the above comments, this Ministry supports the Bill.

This issues with the approval of competent authority.

Sd/-...
Director

Ministry of Home Affairs
(Ms.Santha Thampi, Under Secretary(Judl.&PP)
Ministry of Home Affairs,
Jaisalmer House,
New Delhi.

II)

MOST IMMEDIATE
STATE LEGISLATION

No.V.11012/2/2006-M.E.P.(1)
Government of Inida
Ministry of Health and Family Welfare

Nirman Bhavan, New Delhi
Dated the 25th January,2007

OFFICE MEMORANDUM

Sub: The TamilNadu Admission in Professional Educational Institutions Bill, 2006

The undersigned is directed to refer to Ministry of Home Affairs OM No.17.1.2007-Judl &PP dated 4th January, 2007 forwarding therewith a copy of the above Bill and to say that the matter has been examined. The Ministry administers Indian Medical Council Act, 1956 and Dentist Act, 1948. Under these Acts, Regulations have been framed.

2.Regulation 5(2) of the MCI Regulations on Graduate Medical Education,1 997 is reproduced below:

"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 variations of standards at qualifying examinations conducted by different agencies".

3. In the statement of objects and reasons of the Bill it has been stated that, the Government of Tamil Nadu has been receiving representations from the parents, teachers, educationists, social activists and the student community, requesting for abolition of the Common Entrance Test for admission to professional courses. The bulk of the students appearing for the Common Entrance Test come from rural areas and facilities for them to access coaching classes to equip themselves for the Common Entrance Test are not available due to non-availability of such coaching centres in their locality and also due to paucity of funds and economic circumstances in which those students live. It has been opined that the Common Entrance Test has become a traumatic experience for parents and children as it appears to determine at one stroke the future of the child. The Higher Secondary Examination (Plus two)itself is a serious examination of merit casting a high burden on students and is itself verily an entrance test to get admitted to higher level course and admission to professional courses. And that it obviates the need for any separate common entrance test thereafter, as it is an additional burden on the students.

4. It may be stated that in a number of Supreme Court Judgments, the above Regulation for holding competitive entrance examination where there are more than one Board has been upheld. The said Bill has been examined in the light of the above Regulation, reasons adduced by the State Government of Tamil Nadu and the scheme adopted by the State Government of Gujarat since 1978. As per the scheme adopted by the State of Gujarat till 2006, admission was made on the basis of the marks obtained in qualifying examination on pro-rata basis calculated on the basis of number of students who have passed the qualifying examination conducted by the Gujarat Board vis-a-vis the other Boards. Since 2006, the State of Gujarat is having a new method of combining the marks in qualifying examination (Plus two) in the relevant subjects and the marks obtained in the Common Entrance Test in the ratio 60:40

5. In the light of the above, a conscious decision has been taken that where a State Government is desirous of dispensing with common entrance test, should adopt either of the following methods to achieve the uniform evaluation.

a)allocation of seats on pro-rata basis as adopted by the State of Gujarat,

or

b)adopting percentile system followed in UPSC, State Public Service Commission, etc or for the purpose to achieve uniform evaluation,

or

c)any other fair and equitable method

6. Medical Council of India has been accordingly requested to initiate action for amendment of regulations by seeking approval of Executive Committee General Body of the Council. Similar stand is taken by this Ministry in respect of Dentists Act as well

7. This Ministry conveys its no objection for enactment of the above Bill subject to consideration of the options mentioned of para 5 above in the interest of natural justice. As regards Constitution validity of the Bill, it is for the Ministry of Law and Justice to comment upon. It is further added that the Bill will not be an hindrance to the Central Act or Policy, as it is limited to a particular state which has certain reasons.

Sd/-
(K.V.S.Rao)
Deputy Secretary to the Government of India
Tel.23061288

Ministry of Home Afairs(Ms.Shanta Thampi, US)
Jaisalmer House,
ManSingh Road,

New Delhi
(Fax No.23385020)"

43. From the reading of the above said memorandum, I am of the considered view that the impugned Act does not conflict with Entry 66 of the Union list. Further such act does not dilute or lower the standards of higher education including Technical education. It is also observed that the impugned Act will not of hindrance to Central Act or policy, which is limited to particular state. In fact, repugnancy or otherwise of the Act against item no.66 List 1 (Union List) of Schedule 7 were explained in detail and opined that there is no conflict between Central Government and State Government and ultimately recommended the bill which is under challenge, for getting assent from the President of India. In this context also, I am of the considered view that the impugned order is valid and operative in the State of Tamil Nadu.

44. Before passing the impugned order, there was only one scheme viz, Common Entrance Test available for evaluation of the merits of the students passed in the qualifying examination. No other scheme was available for the evaluation of the merits of the students who have passed in the qualifying examination, while dealing with the case referable in those decisions, viz., 1) PRIYADARSHINI VS STATE OF TAMIL NADU 2005(3)CTC 449 and 2) MINOR NISHANTH RAMESH VS STATE OF TAMILNADU 2006(2)L.W. PAGE 1.

45. Moreover, no expert opinion was given at that time to find out whether Common Entrance Test was mandatory or directory. In that context only it was held in those decision that Common Entrance Test is mandatory.

46. The learned counsel for the respondent would submit that the Common Entrance Test is only a means for achieving the end which was available at that time. Now, the scheme of normalization method has been incorporated in the impugned order. The normalization method is also a means to achieve the end i.e. for the evaluation of merits of the students who have passed the qualifying examination. The above submission of the learned counsel for the respondents were corroborated by the learned counsel for the respondents 3 and 4. It is specifically argued that the Act was passed under Article 254(2) does not conflict with entry 66 of the Union List. The competent persons have enacted the said regulation referred above, have now stated that State Government has authority to frame a scheme viz., normalization method for the evaluation of the merit of the students who have passed in the qualifying examination within their state. As a matter of repetition, I once again refer to clause (ii) regulation of Graduate Medical Education 1997 "In states, having more than one University/Board/Examining Body, conducting the qualifying examination (or where there is 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"

47. To achieve uniform evaluation, the above said regulation was enacted. There was only one scheme of common entrance examination in the Board to achieve uniform evaluation available at that time. Therefore, when the matter was taken up for consideration, it was observed that the Common Entrance examination is a must(mandatory) as there was no other evaluation method available at that time.

48. Now, the State Government framed a scheme viz., "Normalization method" to achieve uniform evaluation of the merit of students who have passed the qualifying examination. It is the State policy to frame a scheme to achieve uniform evaluation of the merits of the students who have passed in the qualifying examination. Usually, the court has no power to interfere with the policy decision of the Government unless it is arbitrary and ultravires of the Constitution and the same was not in violation of Article 14(2) of the Constitution. There is nothing to state that the new scheme framed by the State Government to achieve the common evaluation of the merits of the students who have passed the qualifying examination is arbitrary and in violation of Article 14(2) of the Constitution.

49. The processing should be fair, transparent and non exploitative. The present scheme satisfies the above three conditions. It is no one's case that the impugned order is for the benefit of a particular class of people or a particular religion or a particular gender etc., Act is for the benefit of student community as a whole hailing from the State of Tamil Nadu. By implementing the same, some students may be affected which cannot be construed that the said Act is in violation of Article 14(2) of the Constitution. The Act is for the cause of social justice. Looking at from any angle, I am of the considered view that the said impugned Act is not repugnant to Item 66 of list 1 (Union list of Schedule 7 of Constitution of India)

50. The present evaluation method to find out the merit of the student will not in any way affect the scheme of the Indian Medical Regulation Act (Common Entrance Test). Further the present scheme will not in any way lower down the standard prescribed by the Indian Medical Council. In the earlier case, information from respondents 3 and 4 was not obtained and they were not parties to the said proceedings. Now, the petitioner specifically impleaded respondents 3 and 4 and obtained information from them to sustain their claim. However respondents 3 and 4 have specifically asserted that the present scheme framed by the State Legislature is not repugnant to item 66 of list 1 (Union List of Schedule 7). Having impleaded respondents 3 and 4 as parties to the proceedings and obtained their views, it is not open to the petitioner to ignore those information which are in favour of the State Government.

51. Had the petitioner's acted wisely, they would not have impleaded respondents 3 and 4 as parties and obtained their views. In that

situation, views expressed by the Division Bench of this court with regard to the mandatory nature of Common Entrance Test alone would be available. Naturally every one are bound by the said views. The present position is otherwise. Therefore, the assertive submission of respondents 3 and 4 have to be borne in mind while dealing with the issue on hand.

52. Now, let me deal with the effect of the President assent of the Act 39 of 2006 passed by the Tamil Nadu State Legislature.

53. In the case of KAISER-HIND PVT LTD REPORTED IN 2002 (8) SCC 182 it is observed that

> "The language of clause (1) of Article 254 gives supremacy to the law made by Parliament, which Parliament is competent to enact, it inter alia provides (subject to the provision of clause (2)) that -
>
> (a)If any provision of a law made by the Legislature of a State is repugnant to any provision of an existing law with respect to one of the matters enumerated in the Concurrent list, then the existing law shall prevail and the law made by the legislature of the State shall, to the extent of repugnancy, by void or
>
> (b)If any provision of law made by the legislature of a state is repugnant to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then the existing law shall prevail and the law made by the legislature of the state shall to the extent of repugnancy is void."

54. For the purpose of the present case, clause(2) requires interpretation, which on the analysis provides that: where a law
(a) made by the legislature of a State;
(b) with respect to one of the matters enumerated in the concurrent List;
(c) contains any provision repugnant to the provisions of an earlier law made by Parliament or existing law with respect to that matter;
then, the law so made by the legislature of the State shall-
(1) if it has been "reserved for consideration of the President" and
(2) has received "his assent";
would prevail in that State.

55. Hence, it can be stated that for the State law to prevail, the following requirements must be satisfied:

(1) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent list;
(2) It contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter ;
(3) the law so made by the legislature of the State has been reserved for the consideration of the President; and
(4) it has received "his assent".

56. In view of the aforesaid requirements , before obtaining the assent of the President, the State Government has to point out that the law made by

the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries if the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by Parliament prevailing in a State. The word "consideration" would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by the Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word " assent" in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier law made by Parliament on the same subject-matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State.

57. The assent of the President envisaged under Article 254(2) is neither an idle or empty formality, nor an automatic event, necessitated or to be given for the mere asking, in whatever form or manner and whether specific, vague, general of indefinite. Necessarily, in the quasi-federal structure adopted for the nation predominance is given to the law made by Parliament and in such circumstances only the state law which secured the assent of the President under Article 254(2)comes to be protected/subject of course to the powers of Parliament under the proviso to the said article. Therefore the President has to be apprised of the reasons at least as to why his assent is being sought, the need or necessity and the justification or otherwise for claiming predominance for the state law concerned. This itself would postulate an obligation to enumerate or specify and illustrate the particular central law or provision with reference to which the predominance is desired.

58. The mere forwarding of a copy of the Bill may obviate, if at all, only the need to refer to each one of the provisions therein in detail in the requisition sent or the letter forwarding it, but not obliterate the necessity to point out specifically the particular Central Law or provisions with reference to which, the predominance is claimed or purported to be claimed. The deliberate use of the word "Consideration" in Article 254(2), not only connotes that there should be an active application of mind, but also postulates a deliberate and careful thought process before taking a decision to accord or not to accord the assent sought for. The President has to necessarily consider the nature and extent of repugnancy, the feasibility, practicabilities and desirabilities involved therein before arriving at a conclusion to grant or refuse to grant or even grant partially, if the repugnancy is with reference to more than one law in force made my Parliament. The reservation for "consideration" would necessarily obligate an invitation of the attention of the President as to which of the pre existing Central enactment or which provisions of those enactment are

considered or apprehended to be repugnant, with reference to which the assent envisaged in Article 254(2) is sought for. Moreover, the repugnancy in respect of which predominance is sought to be secured must be shown to exist or apprehended on the date of the State law and not in a vacuum to cure any and every possible repugnancy in respect of all laws- irrespective of whether it was in the contemplation or not of the seeker of the assent or of the President at the time of "consideration" for according assent.

59. In the instant case, the file produced by Thiru. V.T.GOPALAN, Additional Solicitor General would show that the President has applied his mind with regard to overlapping subject between Central List and Concurrent list and found no repugnancy among them and then given his assent to the State Law which falls in the concurrent list after following all the formalities envisaged under the act. In such view of the fact, state law would prevail over the central enactment.

60. In the decision reported in State of Bihar Vs. Shree Baidyanath Ayurved Bhawan (P) Ltd 2005 (2) SCC 762 , it is observed that:

> "Article 254 declares that if any provision of law made by the legislature of a State with respect to matters enumerated in the Concurrent List is inconsistent with the provisions of any law made by Parliament, whether made earlier to the State enactment or later, the State enactment shall to the extent of repugnancy be void, if, however, the State enactment is reserved for and receives the assent of the President, such law will prevail in that State notwithstanding its repugnancy with a parliamentary enactment."

61. In the decision reported in 1979 SCC 439, it is observed that:

> "The presumption is always in favour of the constitutionality of a Statute and the onus lies on the person assailing the Act to prove that it is unconstitutional.
>
> Before any repugnancy can arise the conditions which must be satisfied are : (1) that there is a clear and direct inconsistency between the Central Act and the State Act; (2) that such an inconsistency is absolutely irreconcilable and (3) that the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.
>
> There can be no repeal by implication unless the inconsistency appears on the face of the two statutes. Where there is no inconsistency but a statute occupying the same field seeks to create the distinct and separate offences no question of repugnancy arises and both the statutes continue to operate in the same field. Where there is room or possibility of both the statutes operating in the same filed without coming into collision with each other, no repugnancy results. The important tests to find out as to whether or not there is repugnancy is to ascertain

the intention of the legislature regarding the fact that the dominant legislature allowed the subordinate legislature to operate in the same filed pari passu the State Act."

62. In the PREETI SRIVASTAVA'S case (Preethi Srivastava Vs. State of Madhya Pradesh (1999 (7) SCC 120)), it is observed as follows:

"In our opinion if the State wanted to depart from the selection method laid down in the regulations, it was incumbent of it to pass an order or ordinance and then get the assent for it from the President under Article 254 (2) of the Constitution."

Entry - 66 of List - I deals with the subject of co-ordination and determination of standards in education. By virtue of said powers since there are several Central Enactments it is desirable to have a common entrance test for the purpose of achieving the object of equalizing the standards of the students of the different parts. In the instant case, by virtue of the powers conferred under Entry 25 of List III, the State Government has achieved the object viz, by introducing a method of normalization which was being followed even in elite educational institutions viz. bits bilani. When there was a conflict with reference to the enactments under Entry 66 and Entry 25 of List - III , in the above mentioned two entries the Supreme Court in its decision reported in AIR 1984 SC 981 PREMCHAND JAIN'S case observed that unless the enactment substantially falls within the powers conferred by the Constitution upon legislation it cannot be held to be invalid merely because it incidentally encroaches on matters arise the assent."

63. The Division Bench judgment in Minor Nishanth Ramesh Vs. State of Tamilnadu (2006(2) L.W.1) was concerned since the enactment under dispute did not receive the President's assent in that situation, it was held that the State legislation suffers from lack of legislative competence. On the other hand in the present case, the enactment under dispute has been submitted for the consideration of the President and has received its assent. The procedure for the grant of President's assent has been properly followed while even the Central Ministries controlling both the MCI and AICTI, had approved the State enactment on the ground that normalization method would be an effective alternative to the common entrance test as it is the parent equitable method to find out the comparative merit activities aspiring for admission to medical and technical institutions on the basis of uniform evaluation. Hence, the judgment in Minor Nishanth Ramesh Vs. State of Tamilnadu (2006(2) L.W.1) is distinguishable. The arguments that normalization method is a complimentary and it is not inconsistent with the Central legislation or it does not dilute the standards of education is acceptable for the reason for both the common entrance test and the normalization method aimed at uniform conversation. There is no repugnancy or inconsistency in the two methods considering that the object is one and the same i.e uniform evaluation.

64. The Supreme Court in the decision reported in 1996 (3) SCC Page 15, (THIRUMURUGA KIRUBANANDHA VARIYAR Case) it is observed that the Presidential assent obtained by the State Act would be of no avail, because the repugnancy with the Central Act which was enacted by Parliament after this enactment of the State Act i.e. to say that the Central Act came to be introduced subsequent to the State Act for which the assent of the President was obtained. If the same logic/principle is accepted, in the instant case wherein the State Act was introduced, subsequently, for which the assent of the President was obtained, it is saved by virtue of the special provision under Article 254.

65. Doctrine of occupied field does not totally deprive the State Legislature from making any law, incidentally encroaches upon the Central Act, provided the President's assent is obtained under Article 254. (Fatehchand Himmatlal Vs State of Maharashtra (AIR 1977 SC 1825))

65. CONCLUSION:

(1) If one read the entire text of the constitution together as a whole, one could find that its object , wish and desire is to help and uplift the socially and economically backward and weaker sections of the society. The present impugned order is to prevent harassment and hardship to the socially and economically backward and weaker Sections of the students hailing both from urban and rural areas in getting admission through professional courses. If that be so, can it be stated to be bias, arbitrary and ultravires in violation of Article 14 of the constitution. Certainly not.

(ii)The present legislation is to secure social justice for the abolition of Common Entrance Test the policy of the Government, which is not in violation of Article 14 of the constitution. Therefore, the claim of the petitioner is devoid of any merit.

(iii) The Government got a cue from the observation of Justice Markandey Katju, in the decision referred above, enacted the present act by getting approval of the President for the benefit of the socially and economically backward and weaker sections of the people. My approach is also fall in line with the said observation.

(iv) The effect of the above discussion would prove that the State Government has legislative competency under Article 254(2) of the Constitution with reference to the subject viz., item 25 of list III (Concurrent List) of Schedule VII of the Constitution which is not in any way repugnant to the subject fall under item 66 of List I (Union List) of Schedule VII of the Constitution.

(v)COMMON ENTRANCE TEST

ADVANTAGES TO THE FOLLOWING CATEGORIES	DISADVANTAGES TO THE FOLLOWING CATEGORIES
1)Aristocrat Schools imparting Education to students of graduate parents	1)Students of illiterate parents
2)Coaching centres imparting coaching to students for fees	2)Students who cannot afford to go to the coaching centres due to financial crunch.
3)Students of elite people devote full time in studying with comfort	3)Students of socially and economically backward area who cannot afford to devote full time in studying as they have to attend to other work also.
4)Parents who attend the care of their children for their studies.	4)Parents who cannot afford to care of their children for their studies as they have to afford to the work otherwise to eke out their livelihood.
5) Students of highly qualified parents	5) Students of unqualified parents
	6) Studens studying under the greenwood tree with mosquito bites.

(vii)Mind set/psychology of the students has to be taken note of before taking further action in this matter as the students are under the impression that there will be no Common Entrance Test for this year and have planned to enjoy the vacation during the months May and June of this year.

(viii)Illustration:-

'C' The Central Government passed a regulation 'R'. 'R' was subjected to scrutiny before the court of law who rendered opinion 'O' (Common Entrance Test Mandatory) in which 'C' was not a party. Thereafter 'R' was

once again subject to scrutiny before the court of law, in which 'C' was a party. 'C' has rendered a opinion with reference to 'R' as 'X' (Common Entrance Test is not mandatory) after taking note of the subsequent development. In such view of the fact, opinion 'X' will have a predominance over 'O'. The same logic is applicable to the facts on hand. The opinion of the Central Government alone will prevail. In fact the petitioners not satisfied with the opinion 'O' invited 'C' to express their stand with reference to 'R' who in turn rendered opinion 'X'. Now it is not open to the petitioners to go back and say that they are not bound by the opinion 'X'.

With regard to the aptitude test, I respectfully agree with the view expressed by my Brother. However, I am supplementing my views also:-

I) The impugned Act is not referable to aptitude test for admission to study of Architecture. The Writ Petition is also challenging the impugned Act in the abolition of Common Entrance Test. The 5th respondent filed a counter emphasizing the importance of the aptitude test for admission to study of Architecture, which is not the subject matter of the impugned order.

II) The 5th respondent prescribed the Standard viz., aptitude test for admission of students to Architecture under the Architectural Regulation 1983 relating to Entry 66 of List I (Central Government). The genesis of the Act and the scope of the Act extracted already does not speak anything about the Architectural Regulation 1983, the basis for aptitude test for the admission of students to Architecture.

III) The abolition of Common Entrance Test by the impugned order was the out come of the representation of the parents of the student community. The said impugned Act is a Social Welfare Legislation to meet social justice.

IV) There is no dispute that the Central Government is also supporting the State Act, as the same is to help the socially and economically backward weaker section of the community, hailing both from rural and urban areas. So, it is apparent that the Central Government is also interested to uplift the cause of the socially and economically backward weaker section of the society.

V) From the submission of Mr.V.T.Gopalan, the learned Additional Solicitor General of India, it appears that Mr.Vinodkumar was not authorised to file any counter on behalf of the 5th respondent in support of the cause of the petitioner as the same is against the interest of the Central Government and action is also taken against him. That means genuineness of the counter of the 5th respondent is under dispute.

VI In such view of the fact, if really the State Government is interested to abolish the aptitude test also, it is open to the State Government to tie up with the Central Government and bring a Central legislation/ amendment, at any time to the said Regulation to the extent or otherwise abolishing the aptitude test also for admission to the study of Architecture.

VII) Equal distribution of power/right/benefit is the back bone of the Constitution:

i) Live and let others to live.

ii) Scale down the merit/efficiency, equalize it with the standard of the socially and backward students and share the seats of specialized field among them.

iii) Desire of the crores of people for the abolition of Common Entrance Test cannot be denied by quashing Act 39 of 2006, but their desire should be fulfilled. The above points according to my view are three pillars of democracy, which I uphold the same.

dpk/ paa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government of Tamil Nadu,
   Higher Education Department,
   Fort St. George,Chennai 600 009.

2. The Secretary to Union of India,
   Ministry of Law Justice and
   Company Affair, New Delhi 1.

3. The Medical Council of India,
   Pocket 14, Sector 8,
   Dwarka Phaze-1, New Delhi.

4. All India Council for Technical
   Education, I.P. Estate, New Delhi.

5. The Registrar,
   Council of Architecture,
   India Habitat Centre,
   Core 6-A 1st Floor, Lodhi Road,
   New Delhi.

+ 1 cc to Mr. P. Wilson, Asst Solicitor General of India SR No.29712

+ 1 cc to Mr. N. Muralikumaran, Advocate, ACGSC SR No.29037

+ 1 cc to Mr. R. G. Narendhiran, Advocate, SR No.29018

+ 2 ccs to M/s. La Law, Advocate, SR No.29632

+ 1 cc to Mr. R. Singaravelan, Advocate, SR No.29494

+ 2 ccs to Mr. M. Chandrasekar, Advocate, SR No.29495, 29471

+ 1 cc Mr. Naveen R. Nath, Advocate SR No. 29462

+ 1 cc to Mr. D. Veerasekaran, Advocate SR No. 29521

+ 1 cc to the Government Pleader, High Court, Madras SR No.29739

COMMON ORDER IN WP.NOs.5396,
5397, 5476, 5526 & 6264/07

KLT(CO)
NM,GP,RVL,DCP,SR/30.4.2007