

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO 693 OF 2022

Dr. Sujit Chakma

Son of Sri Meghabaran Chakma
Resident of village-79 Tilla, GB Bazaar
PO- Kunjaban, PS-New Capital Complex,
Sub-Division-Sadar, District-West Tripura,
Pin -799006, Aged about 46 years.

.....Petitioner(s)

Versus

1. The State of Tripura, represented by the
Commissioner & Secretary,
Health & Family Welfare Department,
Government of Tripura, having it's office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO- Kunjaban, PS- New Capital Complex,
Sub-Division-Sadar, District- West Tripura.

2. The Commissioner & Secretary to the
Department of Health & Family Welfare,
Government of Tripura, having it's office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Sadar, District-West Tripura.

3. The National Medical Commission,
represented by its Secretary General,
Board of Governors, having it's office at
Pocket-14, Sector-8, Dwarka Phase-1,
New Delhi-110077.

4. The Deputy Secretary to the
Department of Health & Family Welfare,
Government of Tripura, having it's office at
New Secretariat Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Sadar, District-West Tripura.

5. The Director, Tripura Health Services,
Government of Tripura, having it's office at
PN Complex, Gorkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub- Division-Sadar, District-West Tripura.

6. The Director of Medical Education,
Government of Tripura, having it's office at PN Complex,
Gorkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Sadar, District-West Tripura.

.....Respondent(s)

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate
For Respondent(s)	:	Mr. B. Majumder, Dy. SGI Mr. Kohinoor N. Bhattacharyya, GA
Date of hearing	:	21/11/2023
Date of delivery of Judgment & Order	:	22/12/2023
Whether fit for reporting	:	YES

HON'BLE MR JUSTICE ARINDAM LODH

JUDGMENT & ORDER

The issue falls for consideration in this writ petition is *whether a Government in-service Medical Officer, who belongs to the Scheduled Tribes community, having all requisite educational and professional qualifications, is entitled to get the benefit of age relaxation in terms of the provisions of the Tripura Scheduled Castes & Scheduled Tribes Reservation Act, 1991, for selection to the post of Senior Resident(SR), Department of Surgery, Agartala Government Medical College & GBP Hospital, Agartala.*

2. Before I delve into the above issue, it would be apposite to go through the facts, as projected by the writ petitioner in this petition, which are as under:-

FACTS:-

2.1. The petitioner was initially appointed to the post of Junior Medical Officer, Grade-IV under the Tripura Health Service("THS", for short) on regular basis vide Memo. dated 16.12.2002 and on his joining he was posted at Dhanbilash PHC. In the year 2010 he was promoted to the post of Grade-III THS vide Notification dated 29.05.2010 issued by the Deputy Secretary, Health & Family Welfare(HFW for short) Department, Government of Tripura. Later on, the petitioner prosecuted further studies and successfully completed Master

of Surgery in General Surgery, and on his successful completion of MS in General Surgery, the Under Secretary, HFW Department vide Notification dated 03.06.2013 directed him to be posted in the office of the Medical Superintendent, District Hospital, Unakoti Tripura, Kailashahar as Medical Officer(Surgeon), Grade III of THS and in compliance thereto he joined to his place of posting.

2.2. The petitioner was thereafter transferred to Agartala Government Medical College & GBP Hospital(AGMC for short) vide order dated 02.06.2016. After his joining in the AGMC, he successfully completed his Senior Resident/Registrar-ship under the Department of Surgery, AGMC and at the same time continued to discharge his duties in the AGMC.

2.3. The cause of action for filing the present petition came to start with, primarily, on the first occasion, when the Director of Medical Education(DME for short), Government of Tripura issued an Advertisement dated 11.02.2022(Annexure-15 to the writ petition) inviting applications from the in-service eligible Medical Officers who were serving under the respondents-State and had completed their MCI/NMC recognized Post Graduate (MD/MS/DNB) Course from any of the MCI/NMC recognized institution, for absorption from Tripura Health Services to Tripura Medical Education in the post of Basic Teacher(Senior Resident/Registrar/Tutor), wherein the age criteria to make one eligible was fixed as 45 years as on 25.02.2022.

2.4. It is the case of the petitioner that despite fulfilling all the essential conditions as mentioned in the said Advertisement dated 11.02.2022, he had been debarred from participating in the selection process on the pretext that the

age of the petitioner had exceeded the age stipulated in the advertisement dated 11.02.2022, i.e. beyond the upper age limit of 45 years.

2.5. The petitioner claimed that he being an intending candidate belonging to Scheduled Tribe Community was entitled to a concession of five years over the prescribed maximum age limit as contemplated under the provisions of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991, but the State-respondents without considering the provisions of age relaxation in terms of the said Act had issued the Advertisement dated 11.02.2022 fixing the upper age limit at 45 years, which had seriously and grossly prejudiced the petitioner as well as other aspiring in-service reserved category medical officers serving under the Department of Health & Family Welfare, Government of Tripura.

2.6. Being aggrieved to the said Advertisement dated 11.02.2022, the petitioner earlier had preferred a writ petition before this Court, registered as WP(C) No.207 of 2022, *inter alia* praying for according relaxation of five years age to the petitioner, since he belongs to Scheduled Tribe community, as recognized in the State of Tripura, and also prayed for permitting him to participate in the selection process, initiated by the Director of Medical Education(DME), respondent No.6 herein through Advertisement dated 11.02.2022.

2.7. This Court having heard the learned counsel appearing for the parties, vide order dated 21.06.2022 disposed of the writ petition directing the respondents to consider the case of the petitioner with further liberty to submit representation to the respondents. For the sake of convenience, order dated 21.06.2022 is reproduced here-in-below, in *extenso*:

“21/06/2022

Heard Mr. Somik Deb, learned senior counsel assisted by Ms. R. Chakraborty, learned counsel appearing for the petitioner and Mr. D. Bhattacharya, learned G.A. assisted by Mr. P. Saha, learned counsel appearing for the respondents.

2. It is the case of the petitioner that a person belonging to Scheduled Tribe is entitled to get the benefit of five years relaxation. The petitioner admittedly belongs to the Scheduled Tribe category and as the said relaxation has not been extended to the petitioner, hence, the present writ petition.

3. Admittedly under Article 14,15,16,19, 21 and 311 of the Constitution of India and the statutory rights, guaranteed under the Tripura Scheduled Castes & Scheduled Tribes Reservation Act, 1991(as amended) and the Tripura Medical Education (Administrative & Faculty) Service Conditions Rules, 2015 the persons belonging to the reserved class are entitled for five years of relaxation in their employment service. Since the said Constitutional aspect has been made for the benefit of the petitioner and the similarity placed class of persons, there cannot be any denial to the right under the statute.

4. In view of the above, the writ petition is disposed of directing the respondents to consider the case of the petitioner in its true letter and spirit within a period of one month from the date of receipt of a copy of this order.

5. The petitioner is at liberty to file his representation before the respondents without any further delay.”

2.8. Pursuant to aforesaid directions, the petitioner had approached the respondent-DME with a representation dated 02.07.2022, *inter alia* praying for granting age relaxation of five years in his favour, enabling him to participate in the selection process, in terms of the directions passed by this Court.

2.9. It is relevant to mention at this stage that in the present writ petition, the petitioner referred to a communication dated 23.02.2022 (Annexure-20 to the writ petition), issued by the respondent-DME addressed to the Secretary General, Board of Governors, National Medical Commission(NMC for short), by which communication the Director of Medical Education requested the NMC to grant one-time relaxation of age from 45 years to 50 years in respect of the Senior Residents working in the State of Tripura, for

the interest of large number of patients of the State and also for smooth functioning of the AGMC.

In reply thereto, the NMC, with the approval of the Post Graduate Medical Education Board meeting held on 04.05.2022, communicated its decision to the DME on the issue of age relaxation, vide letter dated 08.07.2022(Annexure-8 to the writ petition) *inter alia* stating therein that the proposal/request made by the DME cannot be agreed to as there is no provision of age relaxation in the Teachers Eligibility Qualification Regulations(here-in-after referred to as **TEQ Regulations, 2022**).

2.10. The representation of the petitioner dated 02.07.2022, is however, addressed to by the respondents-HFW Department vide impugned order dated 29.07.2022(Annexure-22 to the writ petition) stating therein that as per the Gazette of India Notification of NMC dated 22.02.2022 published in the Extraordinary, Part-III, Section IV for the post of Senior Residents and Tutor Graduate must be below 45 years. Meaning thereby, the representation of the petitioner for age relaxation has not been acceded to.

2.11. Being aggrieved by and dissatisfied with the impugned order dated 29.07.2022 refusing to relax the age, the petitioner has preferred the instant writ petition, *inter alia* praying for the following relief(s):

“(i) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Certiorari and/or in the nature thereof, shall not be issued for directing them, to transmit the records, relevant to the subject matter of this writ petition for rendering substantive and conscionable justice to the petitioner and for quashing/setting aside the impugned Order dated 29.07.2022(Annexure-22 SUPRA);

(ii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued for mandating/directing the respondents, to forthwith revoke/rescind the impugned Order dated 29.07.2022(Annexure-22 supra), insofar as it negates the benefit of five

years relaxation, in favour of the petitioner, as a member, belonging to the Scheduled Tribe Category, as recognized in the State of Tripura;

(iii) Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not be issued for restraining/prohibiting the respondents, from acting in any manner, in furtherance of the impugned Order dated 29.07.2022(Annexure-22 infra), insofar as it restricts the benefit of five years relaxation, in favour of the petitioner, as a member, belonging to the Scheduled Tribe Category, as recognized in the State of Tripura;

(iv) In the Ad-interim and Interim, to pass an Order in terms of relief(iii) supra;

(v) Call for the records appertaining to this petition;

(vi) After hearing the parties, be pleased to make the Rule Absolute in terms of i. to iv. Above;”

3. On the aforementioned background facts, I have heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner. I have also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the State-respondents no.1, 2 and 5 as well as Mr. B. Majumder, learned Dy. SGI appearing for the respondents no.3 and 4, the Union of India.

4. Mr. Deb, learned senior counsel appearing for the petitioner at the outset submitted that in terms of the provisions under Section 4(1)(d) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991, the candidates belonging to Scheduled Castes and Scheduled Tribes community are entitled to a concession of 5(five) years, over the prescribed maximum age limit, for appointment to any service or post and it is a matter of right for them under the above-mentioned provision.

4.1. At this juncture, it would be relevant to extract the provision made under Section 4(1)(d) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991, which reads thus:

“The members of the Scheduled Castes and the Scheduled Tribes shall be entitled to a concession of five years over the prescribed maximum age limit for appointment to any service or post, and also for admission to educational institutions and undergoing any kind of training.”

4.2. Learned senior counsel for the petitioner vehemently argued that since there is no provision for relaxation/concession of age under the Medical Council of India Act, 1956, the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 will come into play.

4.3. Learned senior counsel for the petitioner further submitted that the Central and the State Governments are sovereign in their respective domain under Schedule VII, Entry-66 of List-I and Entry-25 of List-III of the concurrent list. Much emphasis being laid upon Entry-25 of List-III of the Concurrent List. Learned senior counsel contended that State has ample power to frame law in relation to coordinate and determine the standard of education including service conditions in medical education in the State. As such, in view of the mandate of Section 4(1)(d) of the Act of 1991 the petitioner has statutory right to enjoy the benefit of concession of five years over the upper age limit of 45 years as provided under TEQ Regulations, 2022.

4.4. For the sake of convenience, Entry-66 of List-I and Entry-25 of List-III are reproduced here-in-below:-

Entry-66 of List-I reads as under:

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

Entry-25 of List-III reads as under:

“.....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 labor.”

4.5. At this stage, it would be useful to extract the relevant provisions of Section 19(A) of the Medical Council of India Act, 1956, relied upon by the learned senior counsel appearing for the petitioner. Section 19(A) of the MCI Act, 1956 deals with Standard of Medical Education, which is reproduced herein- below:

“Section 19(A) of the Medical Council of India Act, 1956

STANDARD OF MEDICAL EDUCATION

1. The Council may prescribe the minimum standards of medical education required other than postgraduate medical qualifications by universities or medical institutions in India.

2. Copies of the draft regulations and of all subsequent amendments thereof shall be furnished by the Council to all State Governments and the Council shall before submitting the regulations or any amendment thereof, as the case may be, to the Central Government for sanction, take into consideration the comments of any State Government received within three months from the furnishing of the copies as aforesaid.

3. The Committee shall from time to time report to the Council on the efficacy of the regulations and may recommend to the Council such amendments thereof as it may think fit.”

4.6. Learned senior counsel appearing for the petitioner has relied on the decision of the Hon’ble Apex Court in ***Tamil Nadu Medical Officers Assn. v. Union of India, (2021) 6 SCC 568*** wherein the Hon’ble Apex Court held thus:

“23.4. The Medical Council of India which has been constituted under the provisions of the Indian Medical Council Act, 1956 is the creature of the statute in exercise of powers under List I Entry 66 and has no power to make any provision for reservation, more particularly, for in-service candidates by the States concerned, in exercise of powers under List III Entry 25.

23.5. That Regulation 9 of the MCI Regulations, 2000 does not deal with and/or make provisions for reservation and/or affect the legislative competence and authority of the States concerned to make reservation and/or make special provision like the provision providing for a separate source of entry for in-service

candidates seeking admission to postgraduate degree courses and therefore the States concerned to be within their authority and/or legislative competence to provide for a separate source of entry for in-service candidates seeking admission to postgraduate degree courses in exercise of powers under List III Entry 25.

83.3. Having regard to the legal and factual context of this case and considering the fact that the issue of legislative competence arises in respect of an entry belonging to shared, and not exclusive field of legislations, in our opinion the said sub-clause cannot be interpreted to mean that the State is denuded of the power to make a separate channel of admission to the said courses for in-service doctors from the State merit list. This is an issue of legislative competence and the Nazir Ahmad v. King Emperor, 1936 SCC OnLine PC 41: (1935-36) 63 IA 372 : AIR 1936 PC 253 (2) dictum does not come into conflict with the interpretation we are giving to this clause. Application of that principle solely on the basis of a Union legislation, without examining the scope of the State's legislative power in the given context, would be contrary to the constitutional scheme in having concurrent field of legislation. The said sub-clause does not prescribe specific bar on the State authorities in providing for such reservation or such separate entry channel.

84. When a subject falls in a shared field of legislation, there may be cases where the dominant legislative body may not have had made provisions in a legislative instrument for which it had power to do so. But in such a situation the dominant legislative body cannot prevent the secondary legislative body from making provisions in that regard. We would make it clear here that we are using the terms “dominant legislative body” to describe the Union Legislature and “secondary legislative body” to refer to the State Legislature in the context of the Concurrent List only. We are doing so because in case of repugnancy between two legislative instruments originating from the Union and the State Legislatures in relation to any entry therein, the former is to prevail as per the constitutional scheme. Turning back to the aspect of occupied field, if certain areas of legislative entry are left void by the Union Legislature, these void areas would come within the legislative power of the secondary legislative body as the constitutional entry gives both the legislative bodies co-existing, power to legislate on such subjects.

85. Regulation 9 of the 2000 Regulations is no doubt a self-contained code. But as we have already observed, it is not an exhaustive code covering all aspects of admission in postgraduate medical degree courses. The scope of this code and extent of its operation has been explained by this Court in Yatinkumar Jasubhai Patel v. State of Gujarat, (2019) 10 SCC 1.

86. Negation of power of the State cannot be a matter of inference, or such negation cannot be in anticipation that the Union Legislature may make provisions in future in the vacant legislative space. The authorities in support of this proposition are West U.P. Sugar Mills Assn. v. State of U.P., (2020) 9 SCC 548,

U.P. Coop. Cane Unions Federations v. West U.P. Sugar Mills Assn., (2004) 5 SCC 430, S.R. Bommai v. Union of India, (1994) 3 SCC and Tika Ramji v. State of U.P., AIR 1956 SC 676 Only in cases where the State Legislature makes a law repugnant to any provision of law made by Parliament, the parliamentary law would prevail.”

5. On the other hand, to counter the submissions of Mr. Deb, learned senior counsel, learned Dy. SGI appearing for the respondents-Union of India, placing reliance upon the decision of ***Baharul Islam v. Indian Medical Assn., 2023 SCC OnLine SC 79*** tried to delineate the distinctive features of Entry-66 of List-I and Entry-25 of List-III, wherein it was held thus:-

“85.(i) Entry 25 of List III of the Seventh Schedule of the Constitution of India deals with the subject education which is in the Concurrent List under which both the Parliament or the Union Legislature as well as the State Legislatures have legislative competence to legislate. However, Entry 25 of List III is subject to, inter alia, Entry 66 of List I which is the Union List. Entry 66 of List I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Thus, when any law is made under Entry 25 of List III by a State Legislature, the same is always subject to Entry 66 of List I. In other words, if any law made by the Parliament comes within the scope of Entry 66 of List I, then the State Legislation would have to yield to the Parliamentary law.

Thus, where one Entry is made “subject to” another Entry, it would imply that, out of the scope of the former Entry, a field of legislation covered by the latter Entry has been reserved to be specifically dealt with by the appropriate legislature.

(ii) In the instant case, it is held that the IMC Act, 1956 is a legislation made by the Parliament for the purpose of coordination and determination of standards in medical education throughout the Country. The said law, along with the Rules and Regulations made there under are for the purpose of determination of standards of medical education throughout India. Thus, determination of standards in medical education in India is as per the IMC Act, 1956 which is a Central Law. This is in respect of modern medicine or allopathic medicine within the scope of Entry 66 of List I and not under Entry 25 of List III of the Seventh Schedule. Therefore, a State Legislature which passes a law in respect of allopathic medicine or modern medicine would be subject to the provisions of the IMC Act, 1956 and the Rules and Regulations made thereunder. This would imply that no State Legislature has the legislative competence to pass any law which would be contradictory to or would be in direct conflict with the IMC Act, 1956 and the Rules and Regulations made thereunder. In other words, the standard in medical

education insofar as modern medicine or allopathy is concerned, having been set by the IMC Act, 1956 and the Rules and Regulations made thereunder or by any subsequent Act in that regard, such as the Medical Council of India Act, 2019, the State Legislature has no legislative competence to enact a law which is in conflict with the law setting the standards of medical education in the context of modern medicine or allopathic medicine, which has been determined by Parliamentary Legislation as well as the Rules. In other words, a State Legislature has no legislative competence to enact a law in respect of modern medicine or allopathic medicine contrary to the said standards that have been determined by the Central Law.

In view of the above conclusion, we hold that decision of the Gauhati High Court holding that the Assam Act to be null and void, is just and proper.

However, the Gauhati High Court has held that the State had no legislative competence to enact the Assam Act in view of Article 254 of the Constitution on the premise that the IMC Act and the Rules and Regulations made thereunder were holding the field and hence, on the basis of the doctrine of occupied field, the Assam Act was struck down as being repugnant to the Central Law. In view of the aforesaid conclusion, we are of the view that the said reasoning is incorrect. It is reiterated that the IMC Act and the Rules and Regulations made thereunder, which are all Central legislations, have been enacted having regard to Entry 66 of List I and would prevail over any State Law made by virtue of Entry 25 of List III of the Constitution.

(iii) Hence, in view of the Indian Medical Council Act, 1956 and the Rules and Regulations made thereunder, the Assam Act, namely, the Assam Rural Health Regulatory Authority Act, 2004, is declared to be null and void, in view of the Assam Legislature not having the legislative competence to enact the said Law.

(iv) Consequently, the subsequent legislation, namely, the Assam Act of 2015 i.e., the Assam Community Professionals (Registration and Competency) Act, 2015, enacted pursuant to the judgment of the Gauhati High Court, is a valid piece of Legislation as it has removed the basis of the impugned judgment passed by the Gauhati High Court. The 2015 Act is also not in conflict with the IMC, Act, 1956. This is because the Central Act namely, IMC, Act, 1956 does not deal with Community Health Professionals who would practise as allopathic practitioners in the manner as they were permitted to practise under the Assam Act, in rural areas of the State of Assam. Hence, by a separate legislation the Community Health Professionals have been permitted to practise as such professionals. The said legislation of 2015 is not in conflict with IMC, Act, 1956 and the rules and regulations made thereunder. Hence, the Act of 2015 is not hit by Entry 66 of List I of the Constitution and is within the legislative competence of the State Legislature under the Seventh Schedule of the Constitution.”

5.1. Learned Dy. SGI also relied on the decision of *Modern Dental College & Research Centre v. State of M.P., (2016) 7 SCC 353*, wherein the Apex Court held thus:-

“143. In Preeti Srivastava case [Preeti Srivastava v. State of M.P., 1999 7 SCC 120: 1 SCEC 742, this Court considered the question 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 to the postgraduate medical courses under the reserved seats category as compared to the general category candidates. While considering the question whether norms for admission have any connection with the standards of education, observing that norms for admission have a nexus with standards of education or rules of admission which are covered under Entry 25 of the Concurrent List, it was held that the minimum standards as laid down by the Central statute have to be complied with by the States. In paras 35 and 36 it was held as under: (SCC pp. 154-55)

“35. ... Both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to List I Entry 66 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 List I Entry 66. 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.

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 List III Entry 25. 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 List I Entry 66. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under List I Entry 66. 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.”*

6. Mr. Bhattacharyya, learned GA appearing for the State respondents submitted that the Director of Medical Education, Government of Tripura had requested the National Medical Commission (NMC) for one-time relaxation of age limit from 45 years to 50 years in respect of Senior Resident (SR) from the State of Tripura vide letter dated 23.02.2022 and in reply the National Medical Commission(NMC) in its letter dated 08.07.2022 has communicated that there is no provision of age relaxation in the Teachers Eligibility Qualifications(TEQ) Regulations. So, the Director of Medical Education is not in a position to give one-time relaxation of age limit from 45 years to 50 years to Scheduled Castes & Scheduled Tribe candidates in respect of Senior Resident/ Registrar/Tutor for the State of Tripura without the consent of National Medical Commission

(NMC). Moreover, the Medical Council of India Act, 1956 Rules and Regulations do not stipulate any provision for age relaxation.

7. The issue raised in the present writ petition is entirely covered by a judgment passed by the Constitution Bench of the Hon'ble Supreme Court in the case of *Tamil Nadu Medical Officers Association & Ors. Vs. Union of India & Ors.*, (2021) 6 SCC 568. In *Tamil Nadu Medical Officer Association(supra)*, the Hon'ble Supreme Court, while dealing with the issue of reservation in respect of in-service candidates and to provide a separate source of entry for such in-service candidates, has categorically held that the State Government cannot trespass into the legislative zone of "Coordination & Determination of Standards" as covered by Entry-66 of the Union List, including by lowering of eligibility criteria for admission as fixed by the Union Legislation i.e. the Regulation 9(3) read with Regulation (6) of the Postgraduate Medical Education Regulations, 2000. The said field is exclusively for the Union Legislature and only such Rules in respect of admission as framed by the State Legislatures which would not have impact on the subject enlisted under Entry-66 of the Union List and may not be in conflict. The Hon'ble Constitution Bench had further held that the State Government are entitled to make provisions, however, the candidates must fulfill the basic admission criteria contained in Regulation (3) read with Regulation 9(6) of the Postgraduate Medical Education Regulations, 2000 and that the minimum standards mandated by the said Statutory Regulations for being eligible to pursue Postgraduate Medical Degree course are adhered to. The Hon'ble Supreme Court further had conclusively held that the Regulation 9 as amended vide Notification dated 05.04.2018 grants benefits to aspiring in-service candidates, however they must qualify the NEET-

PG Examination with minimum eligibility marks as prescribed under the said Statutory Regulations.

7.1. In the event of any Rules or Regulations issued by the concerned State Government in respect of appointment of Medical Teachers in any Medical College in the Country including the Tripura Scheduled Castes and scheduled Tribes Reservation Act, 1991, if in conflict with the provisions, Regulation 6 under Table-1A & 1C of the TEQ Regulations, 2022, published in the Official Gazette on 22.02.2022, to the said extent of conflict, the said Rule/Regulation/Act issued by the concerned State Government shall be repugnant to the TEQ Regulations, 2022 in view of Article 254 of the Constitution of India.

7.2. In the case of *MCI vs. State of Karnataka, (1998) 6 SCC 131*, the Hon'ble Apex Court, while holding that the Statutory Regulations of the erstwhile Medical Council of India are binding and mandatory, has further held that all State enactments, rules and regulations framed by the Universities, etc, in relation to the course of medicine, to the extent, they are inconsistent with the Indian Medical Council Act, 1956 and the Regulations made thereunder by the erstwhile Medical Council of India are repugnant by virtue of Article 254 of the Constitution of India inasmuch as the Indian Medical Council Act, 1956 is relatable to Entry -66 List 1 Schedule VII of the Constitution of India.

7.3. The above view of three-Judge Bench has been reaffirmed by the Constitution Bench of the Hon'ble Supreme Court in the case of *Dr. Preeti Srivastava and Anr. vs. State of M.P. and Ors., (1999) 7 SCC 120*. It is held thus:[SCC p 164 para 57]

“57. In the case of Medical Council of India v. State of Karnataka [(1998) 6 SCC 131] a Bench of three Judges of this Court has distinguished the observations

made in Nivedita Jain [(1981) 4 SCC 296] . It has also disagreed with Ajay Kumar Singh v. State of Bihar [(1994) 4 SCC 401] and has come to the conclusion that the Medical Council regulations have a statutory force and are mandatory. The Court was concerned with admissions to the MBBS course and the regulations framed by the Indian Medical Council relating to admission to the MBBS course. The Court took note of the observations in State of Kerala v. T.P. Roshana [(1979) 1 SCC 572, 580] (SCC at p. 580) to the effect that under the Indian Medical Council Act, 1956, the Medical Council of India has been set up as an expert body to control the minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. There is, under the Act an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. These observations would apply equally to postgraduate medical courses. We are in respectful agreement with this reasoning.”

Furthermore, in **Preeti Srivastava(supra)**, the Hon’ble Supreme Court has held thus:

“52.....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.”

7.4. It is pertinent to mention herein that Regulation 6 under the Table 1A & Table 1C of the TEQ Regulations, 2022, as published in the Official Gazette on 22.02.2022, provides the minimum academic qualifications as well as teaching and research experience required for appointment to the post of

Senior Resident in any of the branches of any of the medical college/institution in the Country. Again, Regulation 6 under the Table-1A & Table 1C of TEQ Regulations, 2022 provides that Senior Residents are those who are undergoing their residency in the concerned specialty department after obtaining recognized postgraduate medical qualification and **that the candidate must be below the age of 45(forty-five) years at the time of initial appointment.** The tenure post of Senior Resident are not faculty positions.

8. The impugned order which is challenged by the petitioner in the present writ petition is cited as under:-

“GOVERNMENT OF TRIPURA HEALTH AND FAMILY

WELFARE DEPARTMENT

F.No.F.30 (106) DME/Estt/Law/22/3404-10 Dated, Agartala, the 29th, July, 2022

ORDER

WHEREAS, Dr. Sujit Chakma, Medical Officer (Surgeon), Gr.-II of Tripura Heal Services, Government of Tripura filed a Writ Petition No. W.P (C) 207 of 2022 before the Hon'ble High Court of Tripura for the benefit of five years relaxation as Schedule Tribe category for selection to the post of Senior Resident (SR), Department of Surgery, A.G.M.C & G.B.P Hospital, Agartala.

AND

WHEREAS, The Hon'ble High Court of Tripura vide Judgment and Order dated 21- 06-2022 disposed of case with direction to consider the case of the petitioner in its true letter and spirit within a period of one month from the date of receipt of a copy of the judgment order.

AND

WHEREAS, The Department received the said Judgment and Order on 01-07-2022 from the O/o. Assistant Registrar, High Court of Tripura and from the petitioner on 02.07.2022.

AND

WHEREAS, As per the Gazette of India Notification of National Medical Commission (NMC) dated 22.02.2022 published in the Extraordinary, Part-III, Section-IV for the post of Senior Resident and Tutor graduate must be below 45 years of age.

AND

WHEREAS, The Director of Medical Education, Govt. of Tripura has requested NMC for one time relaxation of age limit from 45 yrs. to 50 yrs. in respect of Senior Resident for the State of Tripura vide letter No. 12(6)-DME/GEN/MC/2015 (Sub-I)/1117-18 dated 23.02 2022 and in reply the National Medical Commission in its letter dated 08.07.2022 vide No. NMC/MCI-23(1) (112)/2022-Med./PG/025142 has communicated that there is no provision of age relaxation in the Teachers Eligibility Qualifications (TEQ) Regulations.

AND

WHEREAS, After evaluation of all facts & aspects it appears that the petitioner is not entitled to get the benefit of five years relaxation as Schedule Tribe category in the post of Senior Resident, Department of Surgery A.G.M.C & G.B.P Hospital, Agartala.

AND

NOW, THEREFORE, after consideration of all aspect, the competent authority is pleased to order that Consideration entitled to get the benefit of five years relaxation as Schedule Tribe category in the post of Senior Resident, Department of Surgery, A.G.M.C & G.B.P Hospital, Agartala cannot be acceded to.

Accordingly, the representation is disposed of.

This is issued with the approval of the Government of Tripura, Health & Family Welfare Department vide U.O.No.266 dated 27/07/2022.

*By order of the Governor,
(Smti. Anima Debbarma)
Deputy Secretary to the Government of Tripura”*

9. On perusal of the above order under challenge, it is evident that despite the age criteria of 45 years for applying to the post of “Senior Resident and Tutor Graduate”, as per the Gazette of India Notification of National Medical Commission (NMC) published in the Extraordinary Gazette, Part-III, Section-IV vide dated 22.02.2022, the Director of Medical Education, Government of Tripura had requested the National Medical Council (NMC) for one-time age relaxation from 45 years to 50 years in respect of the post of Senior Resident for the State of Tripura vide letter No.12(6)-DME/GEN/MC/2015(Sub-I)/1117-18 dated 23.02 2022 and in reply the National Medical Commission intimated vide communication No.NMC/MCI-

23(1)(112)/2022-Med./PG/025142 dated 08.07.2022 that there is no provision of age relaxation in the TEQ Regulations. The said communication further reveals that the petitioner is not entitled to get the benefit of five years relaxation as a Scheduled Tribe for the post of Senior Resident, Department of Surgery A.G.M.C & G.B.P Hospital, Agartala.

10. The merits of the communication dated 08.07.2022 can be viewed from another angle keeping in mind the submission of Mr. Deb, learned senior counsel in reference to Entry-25 of List-III of the Seventh Schedule of the Constitution of India. Entry-25 of List-III of the Seventh Schedule of the Constitution of India deals with the subject education under which both the Parliament as well as the State Legislatures have legislative competence to legislate. However, Entry-25 of List-III is subject to, *inter alia*, Entry-66 of List-I. Entry-66 of List-I deals with coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Consequently, when any law is made under Entry-25 of List-III by a State Legislature, the same is always subject to Entry-66 of List-I.

11. It is now well-settled that norms of education have a direct nexus with standards of education and the minimum standards as laid down by the Central statute must be complied with by the States. There is no quarrel that a State has the right to control education including medication, but, restricted to the field which is not occupied by any Union Legislation. Age criterion for appointment to the post of Basic Teacher that includes Senior Resident is prescribed under Union Legislation. So, any legislation contrary to the Union Legislation enacted under Entry-66 of List-I, even if, such legislation is made by the State in exercise of power under Entry-25 of List-III, the law made by the Parliament as well as the regulations or rules made under Central Act will

prevail. In other words, the new law made by Parliament, or the regulations or rules made under any Central Act, if repugnant to the law made by the legislature of a State, then the law made by the State, to the extent of repugnancy, shall be void. In other words, the law made by Parliament, or the regulations or rules made under any Central Act, if repugnant to the law made by the legislature of a State, then the law made by the State, to the extent of repugnancy, shall be void.

12. Since the Medical Council of India Act, 1956 is a Central Law, as it is a legislation formulated by the Parliament, therefore, a State Legislature which passes a law in respect of reservation under the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 would be subject to the provisions of the Medical Council of India Act, 1956 and the Rules and Regulations made thereunder. This would imply that no State Legislature has the legislative competence to pass any law which would be contradictory to or would be in direct conflict with the MCI Act, 1956 and the Rules and Regulations made thereunder. In other words, the standard in medical education, having been set by the MCI Act, 1956 and the Rules and Regulations made thereunder or by any subsequent Act in that regard, such as the National Medical Commission Act, 2019, the State Legislature has no legislative competence to enact a law which is in conflict with the law setting the standards of medical education, which has been determined by Parliamentary Legislation as well as the Rules. In other words, a State Legislature has no legislative competence to enact a law in respect of reservation contrary to the said standards that have been determined by the Central Law.

13. In the instant case, Section 4(1)(d) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991, provides relaxation/concession of

5 years over the prescribed maximum age limit for appointment to any service or post on the strength of which, the petitioner has filed this petition to permit him to participate in the selection process for absorption in Tripura Medical Education Service in the post of Basic Teacher (Senior Resident). There is no quarrel in the Bar that in the State of Tripura the maximum age limit for appointment to any post is 40(forty) years. Concession of 5(five) years is given to SC/ST/PH candidates. So, maximum age limit for appointment to any service is determined as 45 years for SC/ST/PH candidates as provided under Section 4(1)(d) of Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991. Admittedly, under Regulation 6 Table-IA of TEQ Regulations, 2022, the maximum age limit prescribed for the post of Senior Resident is 45 years.

14. One more important aspect, which has enough relevance in the context of the case is that the Government of Tripura in exercise of powers conferred by the proviso to Article 309 of the Constitution of India has framed Tripura Medical Education(Administrative & Faculty) Service Conditions Rules, 2015(here-in-after referred to as “said Rules of 2015”) to regulate the method and conditions of the service for persons appointed to the Tripura Government Medical Education(Administrative & Faculty) Services. Under the said Rules of 2015 “Service” means the Tripura Medical Education Service(Administrative & Faculty) service conditions(2d); “MCI” means Medical Council of India[2(g)]; “Medical College” means Agartala Government Medical College Agartala(2h) and “Teaching Hospital” means Govind Ballabh Pant Hospital or G.B.P. Hospital(2i) of the said Rules of 2015.

Rule 3 of the said Rules of 2015 deals with the ‘**Constitution of the Tripura Medical Education(Administrative & Faculty) Service Conditions Rules and its Classification**’. Rule 3 reads as under:

“i. On and from the date of commencement of these rules, there shall be a constituted Service to be known as the “Tripura Medical Education(Administrative & Faculty) Service Conditions.”

ii. The service shall have two wings namely (a) administrative and (b) faculties for Medical College and its attached Teaching Hospital.

.....”

15. In the instant case reference to administrative posts being not relevant, emphasis is given concerning the teaching posts only.

Under Rule 3 of the said Rules of 2015, there is reference to different teaching posts in Medical College and its attached Teaching Hospitals, which are as under:

“a. Different Teaching Posts in a Medical College and its attached Teaching Hospitals are as per norms/guidelines defined in the norms/guidelines of Medical Council of India and as amended from time to time.

Teaching posts of Medical College are (1) Professor, (2) Associate Professor, (3) Assistant Professor, (4) Tutor, (5) Registrar/Senior Resident and (6) Junior Resident.”

Rule 5 deals with the ‘**method of appointment**’. For ready reference, Rule 5 is extracted here-in-below:

“Appointment to different administrative and teaching posts of the service after commencement of these rules shall be made by the following methods:

- a. Appointment to different administrative and teaching posts of the Tripura Medical Education(Administrative & Faculty) Service shall be made as detailed in SCHEDULE-II.*
- b. The basic teachers who have come from THS, within the period (2005-2010) and working under AGMC may be appointed as basic Teacher after getting approval from the appropriate authorities. At the time of appointment he/she will have to fill up an option form in Schedule-II and Annexure-I.”*

Rule 8 of the said Rules of 2015 prescribes ‘**Eligibility and Qualification**’, which may be extracted here-in-below, for convenience:

“Eligibility and Qualifications for direct recruitment to any post in the service

A candidate, for direct recruitment to any post in this service, shall have the Qualification/experience etc. as mentioned in the Schedule-II and satisfy other conditions as specified in the schedules.”

Rule 9 provides ‘**Initial Constitution of Service**’, which is as under:

“Absorption of administrative & teaching posts

The existing members of Administrative Posts like Director of Medical Education, Joint Director of Medical Education, Principal of Agartala Govt. Medical College, Superintendent-cum-Vice Principal, Deputy Medical Superintendent, Medical RMO of GBP Teaching Hospital and Teaching Posts like Professor, Associate Professor, Assistant Professors of different disciplines of the Medical College including those basic teachers like Tutor, Registrar/Senior Resident and Junior Resident of the Agartala Government Medical College, will be considered as members of Tripura Medical Education(Administrative & Faculty) Service Conditions on and from the date of commencement of this service.”

Rule 12 of the said Rules of 2015 prescribes the ‘**Age of appointment and age of superannuation**’, which stipulates that *“Age of appointment to any administrative & Teaching Posts shall be as per Government Rules, where no mention has been made in SCHEDULE-II”*.

Rule 14 of the said Rules of 2015 deals with the ‘**Eligibility Criteria**’ which provides that *“Qualification, experience and other eligibility criteria for appointment to different administrative and teaching posts is given in SCHEDULE-II”*.

16. On summation of the above provisions it comes to light that Schedule-II appended to the said Rules of 2015 determines/governs the eligibility and qualifications of a candidate for direct recruitment to any post in the service. It leads this Court to peruse Schedule-II appended to the said Rules of 2015.

17. It is pertinent to mention herein that basic teacher includes Senior Resident. Essential qualification and experience along with other criteria required for the post of Basic Teacher are extracted here-in-below in tabular form:

<i>Category & No. of Post.</i>	<i>Name of Post</i>	<i>Age</i>	<i>Educational and other qualifications required for Appointment</i>
<i>Group-A(Gazetted) 84 Posts</i>	<i>Basic Teacher Tutor, Registrar/Senior Resident),</i>	<i>Not more than 40 years relaxable by 5(five) years for ST/SC/PH candidates and Govt. in-service candidates.</i>	<i>Essential qualification and experience</i> <p><i>i. 50% of the posts by direct recruitment through TPSC, failing which by deputation from THS.</i></p> <p><i>ii. Remaining 50% of the posts by absorption from Medical Officers of Grade-III & Grade IV of THS.</i></p> <p><i>Educational and other qualification required for direct recruitment:</i></p> <p><i>i) Minimum qualifications as prescribed by the MCI and specified in the “Minimum qualifications for Teachers in Medical Council Regulations, 1998 published in Part-III, Section-4 of the Gazette of India dated 5.2.1998 and as amended from time to time.</i></p>

18. On bare perusal of the above rules of Schedule-II relating to the post of Senior Resident, it is clear that the age as prescribed for direct recruitment shall not be more than 40 years, relaxable by 5(five) years for ST/SC/PH candidates and Govt. in-service candidates.

19. The Educational and other qualifications for recruitment to the post of Senior Resident are in consonance with the requirements as prescribed by the MCI and specified in the “Minimum qualifications for Teachers in Medical Council Regulations, 1998” published in Part-III, Section-4 of the Gazette of India dated 05.02.1998 and as amended from time to time. So, the said Rules of 2015 being framed by the Government of Tripura is not in conflict with MCI Act, 1956 which is a central Act obviously and the Regulations thereof as amended from time to time. Thus, the age limit under the said Rules of 2015 for appointment/absorption to the post of Senior Resident is 40 years, which is relaxable by 5(five) years in case of SC/ST/PH and Govt. in-service candidates.

20. The petitioner belongs to ST category and is a Govt. in-service candidate. Admitted fact is that the petitioner having attained the age of 45 years has sought for further 5(five) years relaxation, which is impermissible even under Schedule II appended to the said Rules of 2015 framed by the Government of Tripura.

21. Now, the question comes as to the power of relaxation, if any to be exercised by the respondents-State. Rule 29 of the said Rules of 2015 incorporates relaxation clause, which reads as under:-

“29. RELAXATION:

Where the Government is of the opinion that it is necessary or expedient to do so, he may, by order, for reasons to be recorded in writing, and, in consultation with the Commission to relax any of the provisions of these rules with respect to any class or category of persons, or posts;

*Provided that the power shall not be exercised so as to relax essential qualification, period of experience as prescribed by MCI for appointment to any of the methods specified in the rules (including promotion) or provisions regarding pension and **age of recruitment.**”*

22. On plain reading of Rule 29 quoted here-in-above, it comes to light that the power of relaxation has been vested to the Government under certain compelling circumstances, and if the situation so demands, the Government in consultation with the Commission may relax any of the provisions of the said Rules of 2015 in respect to any class or category of persons, or posts, after recording reasons therein for exercising such power.

However, a proviso is seen to have incorporated in Rule 29 which clearly contemplates that such power of relaxation shall not be exercised so as to relax age of recruitment and essential qualification, period of experience as prescribed by MCI for appointment to any of the methods specified in the rules(including promotion) or provisions regarding pension and age of recruitment. Rule 29 clearly restricts the power of the respondents-authorities to relax the age of recruitment of the petitioner in any manner whatsoever.

23. Age being one of the important and essential criteria in determining the standard of Medical Education cannot be altered or modified by any State Legislature inconsistent with or in conflict with the MCI Act, 1956 or the NMC Act, 2019 and the Regulation 6 under Table-IA and IC of the TEQ Regulations, 2022. State Government may lay down any additional eligibility criteria in its rule or regulations for better standardization in the area of medical education without impinging the essential criteria or qualifications what is prescribed by the Central Regulations or Statutes.

24. At the cost of repetition, what has emerged in the instant case is that the said Rules of 2015 enacted by the Government of Tripura determining the age for applying to the post of Senior Resident is consistent and not in conflict with the TEQ Regulations, 2022 made under the MCI Act, 1956. As a

corollary, the petitioner has no legal or constitutional right to claim relaxation of age criteria, or to say it otherwise, to allow him a concession of 5(five) years over prescribed upper age limit of 45(forty five) years on the strength of Section 4(1)(d) of Tripura Schedule Castes and Schedule Tribes Reservation Act, 1991. Resultantly, in the backdrop of aforesaid legal principles, the impugned order dated 29.07.2022(Annexure-22 to the writ petition) issued by the respondents-State rejecting the claim of the petitioner does not survive for consideration and needs no interference. Hence, the petitioner is not entitled to get appointed/absorbed in the post of Senior Resident under the respondents.

25. For the reasons stated and discussed here-in-above, the present writ petition being devoid of any merits stands dismissed.

JUDGE



Snigdha/Dahlia

SANJAY Digitally signed by
GHOSH SANJAY GHOSH
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