

## The Tamil Nadu Dr. M.G.R. Medical University Vs P. Anand

**Court:** Madras High Court

**Date of Decision:** Nov. 16, 2011

**Acts Referred:** Constitution of India, 1950 " Article 14, 246, 246(2), 254  
Graduate Medical Education Regulations, 1997 " Regulation 12, 12(2), 12(4)  
Indian Medical Council Act, 1956 " Section 20(1), 33  
Tamil Nadu Medical University Act, 1987 " Section 29(3), 44(1)

**Hon'ble Judges:** M.Y. Eqbal, C.J; T.S. Sivagnanam, J

**Bench:** Division Bench

**Advocate:** Narmadha Sampath, for the Appellant; S. Thangasivam (WAs.901 to 908 of 2011), Mr. C.A. Diwakar (W.A. No.909 of 2011) for Respondent - 1, Mr. V.P. Raman for Respondent - 2 and Mr. A. Navaneethakrishnan, Advocate General assisted by Mr. S. Venkatesh, Govt. Pleader for Respondent - 3, for the Respondent

**Final Decision:** Dismissed

### Judgement

Honourable M.Y. Eqbal, Chief Justice and T.S. Sivagnanam, J.

The legality, validity and propriety of the new guidelines evolved by the

appellant - Tamil Nadu Dr.M.G.R. Medical University for clinical/viva-voce examination and/or pattern of evolution of MBBS Examination is the

subject matter in these appeals. Both the first year and final year MBBS students filed several writ petitions challenging the said guidelines. When

the writ petitions relating to the first year MBBS students came up for hearing before us, the learned counsel appearing for the University and the

learned Advocate General produced before us a resolution passed by the Special Governing Council of the appellant - University in which it has

been decided not to implement the changes in the MCI Regulations on the pattern of evolution to first year MBBS Course for the August, 2011

examinations. The appellant - University took this decision on the basis of the instructions given by the State Government. Consequently, the Court

permitted the writ petitioners to withdraw their writ petitions.

2. So far as the other writ petitions filed by the final year MBBS students challenging the said guidelines are concerned, the learned single Judge

allowed the writ petitions and quashed the impugned guidelines viz., Guidelines for Clinical/Viva Voce Examinations Final Year MBBS (Non

Semester) Part-II Examinations concerning the subject ""General Surgery"" introduced by the appellants-The Tamil Nadu Dr. M.G.R. Medical

University insofar as they insist a minimum of 50% marks individually in the sub-branches, viz., Practical for General Surgery and Orthopedic, as

being illegal, unconstitutional and repugnant to the Regulations framed by the Medical Council of India ("MCI" in short), in particular Regulation

12(4) of the Medical Council of India Regulations on Graduate Medical Education, 1997 and consequently declare the writ petitioners as having

passed in the University Examination in General Surgery in the Final Year 2010-2011, thus enabling them to proceed with the Internship in the year

2011-2012. Hence, these appeals by the appellant - University.

3. The respondents/writ petitioners-students secured admission in the appellant-Tamil Nadu Dr. M.G.R. Medical University ("University" in short),

in the first year M.B.B.S. Course in the year 2006-2007 and were allotted various Medical Colleges and they have passed the First, Second and

Final Year Part-I Examinations. The final year M.B.B.S. Course consists of two parts, viz., Part I and Part II and all the students have passed the

same in respect of Part-I Examination. The final year Part-II, which is conducted in the fourth year of the course, contains the discipline General

Surgery with two papers, viz., Paper-I, which includes General Surgery (Section-1) and Orthopedics (Section-2) as well as Paper-II, which

includes Anaesthesiology, Dental diseases and Radiology, Oral (viva) and Interpretation of Investigative Data Clinical (Bed Side). The Medical

College of India Regulations, 1997 ("MCI Regulations" in short) stipulate that in respect of the said Part-II of the final year, a candidate must

obtain 50% marks in aggregate with a minimum of 50% in theory, including orals, and a minimum of 50% in practical/clinical, which means that in

each of the subjects, the candidate must obtain 50% in aggregate with minimum 50% in theory and 50% in practical/clinical.

4. The appellant-University has been following the MCI Regulations till the Academic Year 2008-2009. However, subsequently, the University

has introduced the impugned guidelines in respect of the final year Part-II General Surgery of M.B.B.S. Course by dividing the practical/clinical

into two separate branches, one as Clinical Surgery Clinical (Practical) and the other as Ortho Clinical (Practical). According to the MCI

Regulations, the total quantum of marks fixed for practical/clinical is 100. However, under the impugned guidelines, the University has fixed the

total marks for practical as 150 and divided the same into two, viz., Clinical Surgery Clinical (Practical) 100 Marks with minimum requirement of

50 and Ortho Clinical (Practical) 50 marks with minimum requirement of 25 for a pass. In effect, according to the writ petitioners, in respect of the

practical/clinical marks in General Surgery of Part-II of the Final Year, when the MCI Regulations contemplate obtaining of 50% of the total

marks, the appellant-University has divided them into two subjects, stating that in each of the subjects, 50% of marks have to be obtained

individually. In all these cases, it is not in dispute that the students have obtained 50% of the total marks in the Part-II General Surgery as stipulated

by the Medical Council of India and therefore, according to them, they are entitled to be declared as passed in the final year MBBS Course, so as

to be eligible to go for internship. However, as per the impugned guidelines of the appellant-University, they were unable to secure 50% in each of

the papers in General Surgery and on the basis that in individual papers the petitioners have not obtained 50% marks, they were declared to have

been failed, thereby depriving them to go for the internship.

5. It is the case of the writ petitioners-students that in Part-II Final Year M.B.B.S. Examination, though as required under the MCI Regulations

which stipulate 50% as aggregate for a pass in practical/clinical they have obtained more than 50% of marks in practical/clinical put together, the

appellant-University has declared them failed for the reason that in two papers in practical/clinical, they have not individually secured more than

50% marks. Therefore, according to the writ petitioners-students, the impugned guidelines framed by the appellant-University are opposed to the

MCI Regulations, 1997 and hence, the writ petitions were filed before the learned single Judge to strike down the same on the grounds --

(i) that the impugned guidelines of the appellant-University are unconstitutional and opposed to the MCI Regulations, 1997;

(ii) that as per the judgments of this Court, a candidate who has obtained 50% of marks as per the MCI Regulations, 1997 is eligible for a pass;

(iii) that the MCI Regulations, 1997 is binding on the appellant-University as well as the Director of Medical Education;

(iv) that the MCI Regulations, 1997 have been framed by the Medical Council of India to have uniform standard in medical education throughout

India;

(v) that when all other universities in the country are following the MCI Regulations, 1997 in this regard, the first respondent alone, by virtue of the

impugned guidelines, has committed gross discrimination by failing the writ petitioners despite the fact that they have obtained more than 50% of

the marks in practical/clinical examination put together as required under the MCI Regulations, 1997 and therefore, the impugned guidelines of the

appellant-University are discriminatory and violative of Article 14 of the Constitution of India;

(vi) that Regulation 12(4) of the MCI Regulations, 1997 is binding on the appellant-University and under the guise of adopting a better standard,

the appellant-University cannot fail the writ petitioners simply because in the subject practical/clinical, they have not obtained minimum 50% of

marks in each of the papers, especially by stipulating a separate paper Ortho, which is unlawful and such stipulation by the University is without

jurisdiction; and

(vii) that at the time when the writ petitioners were admitted in the First Year M.B.B.S. Course in 2006-2007, such guidelines were not available

and they were introduced only in the year 2009-2010, right in the middle of the course by the appellant-University and therefore, there is a

violation of the legitimate expectation.

6. In the counter affidavit filed by the appellant-University before the learned single Judge, it was admitted that the writ petitioners had appeared

for the Final Year M.B.B.S. Part-II Examination in February, 2011 and the results of the Final Year M.B.B.S. Examinations were published on

20.3.2011. The details of the marks secured by each writ petitioner as opposed to the minimum and maximum marks in the said examination were

furnished by the appellant-University. According to the University, the Clinical Surgery and Clinical Orthopaedics papers were made as separate

papers with maximum 100 marks in respect of Clinical Surgery and maximum 50 marks in respect of Clinical Orthopaedics and a candidate for a

pass should obtain separately 50% in Clinical Surgery and 50% in Clinical Orthopaedics. It was stated that though in all these cases, while

invariably the petitioners have obtained more than 50% in Clinical Surgery, they have obtained less than 50% in Clinical Orthopaedics. It was

stated that when both the marks are put together, viz., the marks in Clinical Surgery and Clinical Orthopaedics, for which the maximum is 150

marks and the minimum is 75 marks, it would be seen that all the writ petitioners have obtained more than 50%. However, the writ petitioners

having not secured individually 50% marks in each of the two subjects, especially Clinical Orthopaedics, as required under the impugned

regulation, it is stated that they have failed in the Final Year Part-II Examination.

7. It was further stated in the counter affidavit that the Standing Academic Board of the appellant-University, which is the highest academic body,

is empowered u/s 29(3) of the Tamil Nadu Dr. MGR Medical University, Chennai Act, 1987 to make Regulations, advise the Governing Council

on the promotion of research, and suggest measures for revisions and innovations in academic and research programmes, and Section 44(1) of the

Tamil Nadu Dr.MGR Medical University, Chennai Act, 1987 enables the Standing Academic Board to make Regulations. As per the statutes, the

Board of Studies of each department makes recommendations in respect of the courses of study and examinations in the subjects and in the

meeting of the Board of Studies in Final MBBS Course held on 3.5.2010, various academic issues were discussed and the revised

clinical/practical examination has been implemented in the subjects of Ophthalmology, Oto-Rhino-Laryngology, Community Medicine in Final

M.B.B.S. Part-I and Medicine, General Surgery, Obstetrics and Gynaecology and Family Welfare, Paediatrics, including Neonatology subjects in

Final M.B.B.S. Part-II Course. It was also decided in the meeting to implement the revised clinical/practical examination with effect from

February, 2011 examinations onwards and the said recommendations of the Board of Studies were approved in the 39th Meeting of the Standing

Academic Board held on 21.6.2010.

8. Subsequently, the qualifying marks for a pass in the Final Year Part-II Examination were declared and in the instruction to the candidates, the

scheme of examination has been clearly explained, in that the candidates were informed that they should secure minimum 50% marks in each of the

subjects, failing which they will be deemed to have failed. It was stated that the communication was made to all the Deans/Principals of Medical

Colleges affiliated to the first respondent University in September, 2010 for wide publicity among the student community and therefore, even

before attending the Final Year Part-II M.B.B.S. Examination in February, 2011, the candidates were informed about the scheme of examination

much in advance, viz. in September, 2010 itself. It was also stated in the counter affidavit that the writ petitioners have not challenged the entire

revised guidelines as prescribed by the Standing Academic Board before writing the examination. Having written the examination and having failed

as per the scheme, they had approached the writ Court, which cannot be entertained. It was further stated that the MCI Regulations, 1997 only

prescribe the minimum standard of education and it is always open to the appellant-University to frame its own regulations and syllabus not below

the standard prescribed by the Medical Council of India and that has been confirmed by the Supreme Court also and therefore, the revision of

regulations stipulating higher qualification cannot be held to be against the provisions of the MCI Regulations, 1997. It is the case of the appellant-

University that as per the impugned guidelines of the University, unless a candidate passes the Final Year Part-II M.B.B.S. Examination, he is

ineligible to undergo the internship course.

9. In the counter affidavit filed by the Medical Council of India before the learned single Judge, it was stated that the Medical Council of India is an

expert body created to maintain highest standard of medical education under the Indian Medical Council Act, 1956 having the power of

supervision regarding the qualification and eligibility standards for admission into medical institutions and having overall invigilation. The Medical

Council of India emphasised the importance of medical education, which deals with human beings, and the facilities that must be available for such

studies. It was stated that keeping in mind its statutory obligations in maintaining the highest standard in medical education in the country by virtue

of the powers conferred u/s 33 of the Indian Medical Council Act, 1956 and with the prior approval of the Central Government, the Medical

Council of India framed rules laying down the minimum standard of infrastructure, teaching and other requirements for conduct of medicine course.

The Medical Council of India also lays down various details regarding the course content, duration, distribution of teaching and training days on

various subjects and also for conduct of examination, etc. and the stipulations of the Medical Council of India are binding and mandatory and all

the State enactments, rules and regulations framed by the Universities, in relation to the conduct of medicine courses to the extent they are

inconsistent with the Act and the Regulations made by the Medical Council of India are repugnant by virtue of Article 254 of the Constitution of

India. It was further stated that as per Chapter-IV of the MCI Regulations, 1997, which deals with the examination regulation, every M.B.B.S.

student is required to obtain minimum 50% marks in aggregate with a minimum of 50% in theory, including orals, and minimum of 50% in

Practical/Clinicals. The Medical Council of India relied upon the following clarification issued by it while implementing the order of the Supreme

Court in Civil Appeal No.3883 of 2006, dated 1.6.2007, which is to this effect:

(1) The candidate has to secure 35% in internal examination to make him eligible to appear in the University examination of the concerned subject.

(2) He has to secure 50% in Theory as well as in oral, for example Medicine i.e. Theory + Oral total 140 marks and 50% of thereof is 70 marks.

(3) 50% of the University examination in clinical or practical for example in the subject of medicine total 100 marks 50% of thereof is 50 marks.

(4) 50% of the aggregate of theory and oral (Internal & External), Clinical/Practical (Internal & External) for example in subject of medicine total

300 marks and 50% whereof is 150 marks.

For a student to pass in the subject of medicine, a student has to secure 70 marks in Theory & Oral; 50 marks in clinical/practical and 150 marks

in aggregate are required." It was further stated by the Medical Council of India that while the Council prescribes the minimum standard laid down

by the Central statute, in respect of admission, the State may lay down other additional norms for admission and regulate admission in exercise of

its powers under Entry 25 of List III of the Seventh Schedule to the Constitution of India, however, in a manner not inconsistent with or diluting the

criteria laid down by the Medical Council of India. The Medical Council of India referred to Chapter-IV of the MCI Regulations, 1997 and stated

that nobody can request the Court to direct the statutory authorities to act against its statutory regulations. The following decisions were relied upon

by the Medical Council of India in support of their stand :-

State of Kerala Vs. Kumari T.P. Roshana and Another, ;

Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, ;

A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, ;

Medical Council of India Vs. State of Karnataka and Others, ; and

Dr Preeti Srivastava and Another Vs. State of M.P. and Others, .

10. The contention of the learned counsel appearing for the writ petitioners before the learned single Judge was that the impugned guidelines, in the

guise of attempting to impose better qualification than prescribed by the Medical Council of India, have in effect, resulted in gross arbitrariness and

discrimination and it is unreasonable. It is their case that renowned institutions like All India Institute of Medical Sciences, Jawaharlal Institute of

Post-Graduate Medical Education and Research, Maharashtra University of Health Sciences, Nashik, apart from the Annamalai University and all

the Deemed Universities in Tamil Nadu, are all following the MCI Regulations, 1997 only for maintaining uniformity in medical education in India

and while so, the appellant-University alone, by making the impugned guidelines, has discriminated the students, who are less than 6% when taken

on all India basis, and the same is arbitrary. It is their submission that it is not as if an attempt is made to have the quality of education improved by

the impugned guidelines. It is stated that the students who have obtained 50% of marks in clinical and practical put together as per the MCI

Regulations, who have passed from other Universities are permitted by the appellant-University to undergo internship in its affiliated colleges for the

Academic Year 2010-2011 itself, viz., in Kilpauk Medical College, CMC, Vellore, etc., while the writ petitioners who belong to the appellant-

University and colleges affiliated to it alone have been grossly discriminated by introducing a new scheme of securing pass mark in each of the

subjects in the Final Year Part-II M.B.B.S. Examination. It is also stated that the appellant-University is bound to admit students who have passed

under the MCI Regulations from other Universities throughout India for Post Graduate Courses and when the appellant-University admitted such

students who have passed the Part-II of the Final Year M.B.B.S. Course as per the MCI Regulations for Post Graduate Courses, the denial of

such right to the writ petitioners for the simple reason that they became students of the appellant-University or colleges affiliated to it is obnoxious,

and there is no nexus between the object sought to be achieved in increasing the standard of medical education.

11. It is further submitted that the impugned guidelines seek to put the writ petitioners in a highly disadvantageous position when compared to

similarly situated persons and therefore, it is prejudicial to their interest and violative of Article 14 of the Constitution of India. It is also contended

that the appellant-University has intimated about the scheme of examination only in the middle of the academic year in 2010, while they were

admitted in the First Year in 2006-2007 itself and by introducing the new scheme of examination in the middle of the year 2010, the writ

petitioners were made to undergo the examination in the Final Year Part-II M.B.B.S. Course in February, 2011 and this defeats the legitimate

expectation of the petitioners, who have been only assuming that only the MCI Regulations, 1997 will be followed. It is also submitted that the

impugned guidelines are void, without authority of law and inconsistent with the MCI Regulations, 1997. According to them, the impugned

guidelines seek to create a different pattern of distribution of marks contrary to Regulation 12(4) of the MCI Regulations. It is also contended that

the medical universities are bound by the MCI Regulations, 1997. According to them, the Medical Council of India is an expert body which

controls the minimum standard of medical education, and the scheme of the Medical Council of India having been approved by the Central

Government, it has got a statutory force and therefore, it is their case that any regulation which is inconsistent with the MCI Regulations, 1997 is

void. They would further submit that it is not open to the appellant-University to encroach upon the field occupied by the Medical Council of India.

According to the writ petitioners, even the MCI Regulations provide for a grace mark of 5 marks and that has also not been considered by the

appellant-University and therefore, the impugned guidelines are liable to be set aside.

12. In support of their case, the writ petitioners relied upon the following decisions :-

Raj Kumar and Others Vs. Shakti Raj and Others, ; Dr Preeti Srivastava and Another Vs. State of M.P. and Others, ; Salini Nair and another v.

Pondichery University and others, 2004 W.L.R. 496; Bharat Guthikonda and 2 others v. The Pondicherry University and others, 2006 W.L.R.

185; State of Maharashtra Vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and Others, ; Maharashtra University of Health Sciences

represented by Deputy Registrar Vs. Paryani Mukesh Jawaharlal and Others, ; and Sethi Auto Service Station and Another Vs. Delhi

Development Authority and Others, .



13. On the other hand, learned counsel appearing for the appellant-University contended before the learned single Judge that while the facts were

not being disputed, in view of the categoric pronouncement by the Supreme Court that what is prescribed by the Medical Council of India

regarding the qualification is only a minimum requirement and it is certainly open to the State, including the University, to impose more requirement

by way of qualification, the impugned guidelines sought to be introduced by the appellant-University cannot be held to be contrary to the provisions

of the MCI Regulations, 1997. It is submitted that inasmuch as the writ petitioners were informed well in advance about the scheme of

examination, having written the examination, they cannot now question the impugned guidelines. According to the University, only the writ

petitioners, who are few in number, have chosen to question the impugned guidelines, while all other students have given the examination by

accepting the scheme of examination, as the intention of the scheme is to ensure that the candidate who completes the M.B.B.S. Course should not

only have an overall knowledge, but also should have the minimum required marks in the individual subjects in the Final Year. It is further submitted

that when the highest academic body, namely the Standing Academic Board of the University, has taken a decision to that effect within the powers

conferred under the statutes governing the appellant-University, the Court cannot direct the University to act against its statute. It is submitted that

the Standing Academic Board of the University has taken note of the fact that the students have passed through the Final Year Examination with

overall knowledge without special knowledge in each of the subjects and therefore, they wanted to have the minimum marks required in each of

the subjects, and it is insufficient for a person to complete the M.B.B.S. Course only with knowledge in General Surgery, ignoring Orthopaedics as

such.

14. The learned single Judge, after considering the detailed arguments advanced on either side, while observing that there is certainly repugnancy

between the impugned guidelines issued by the appellant-University and the Regulations framed by the Medical Council of India under the powers

conferred to it by Section 33 of the Indian Medical Council Act, 1956 and this being a subject under Entry 25 of List-III of the Seventh Schedule

to the Constitution of India, held that the impugned guidelines framed by the first respondent University were unconstitutional and unenforceable.

The learned Judge held that even though the present issue has not been dealt with by any of the legal forums in the country, the division of Clinical

Subject into two, viz. General Surgery and Orthopaedics and insistence on the minimum of 50% marks in each of the papers under the impugned

guidelines is not only discriminatory to the interest of the students of the appellant-University, but also opposed to law and repugnant to the MCI

Regulations, 1997, apart from creating a totally arbitrary position, resulting in violation of Article 14 of the Constitution of India. The learned Judge

observed that such requirement has never been intimated to the students at the time when they were admitted in the First Year of M.B.B.S.

Course. Admittedly, the impugned guidelines were introduced sometime in September, 2010 in respect of the writ petitioners and similarly situated

persons who were to write the final examinations in Part-II in February, 2011. Certainly such an event would not have been anticipated by any of

the students and therefore, the principle of legitimate expectation is also attracted to the facts of the present case. Though the learned Judge

observed that it is true that in respect of academic matters Courts should be slow in interfering therewith for various reasons, the most important

one being that the Court is not an expert in the subject and it is the University which has to decide such issues and it cannot be compelled to act

against its own Statute, on the facts of the present case, it was held that it is the Medical Council of India which consists of experts in the field and

which has formulated the MCI Regulations, 1997, and there is nothing wrong in holding that such Regulations are to be scrupulously followed and

imposing of a better qualification does not mean discriminating similarly situated persons. The learned Judge declined to accept the vehement

contention of the learned counsel appearing for the appellant-University that the Standing Academic Board had taken the decision after due

deliberations observing that even if a decision had been taken after due consultations and deliberations, such decision is, of course, subject to

judicial scrutiny if it is against the decisions of another centrally created expert body, especially when such a decision is going to create imbalance

and arbitrariness. Having held so, the learned single Judge allowed the writ petitions, making it clear that in respect of each of the writ petitioners,

based on the MCI Regulations, 1997, by taking the aggregate marks, if the petitioners obtain 50%, they should be declared passed and permitted

to proceed to the internship by allotting them various medical colleges.

15. Aggrieved against the order passed by the learned single Judge, the appellant-University has filed the aforesaid writ appeals. As stated earlier,

the students who were not parties to the writ petition before the learned single Judge and who claim to have been affected by the impugned

regulation, have filed individual writ petitions for the relief stated hereinabove.

16. Ms. Narmadha Sampath, learned counsel for the appellant-University assailed the order of the learned single Judge on manifold grounds.

According to her, the learned Single Judge has heard in not appreciating the fact that the appellant-University has sought to introduce the impugned

guideline only with a view to improve the standard of a Medical Student in order to make him a completely qualified medical professional, which is

the ultimate objective of the rules and regulations framed by the Medical Council of India. The learned single Judge has further erred in coming to

the conclusion that the impugned guidelines prescribed by the appellant-University are repugnant to the guidelines laid down by the Medical

Council of India. The learned counsel submitted that the writ petitioners-students having fully acquiesced and subjecting themselves to the

regulations by appearing for the examinations, cannot be allowed to retreat after having suffered the consequences and having failed in the

examinations as per the new regulations. In view thereof, the direction issued by the learned single Judge allowing the writ petitioners to be

declared passed when they had in fact failed in the examinations, was clearly contrary to law. It is the stand of the learned counsel that the learned

single Judge had failed to analyse the effect of the impugned guideline on the standard of medical education in general, in that he has not given a

finding as to whether the impugned guidelines are for the betterment of the standard of medical education or it actually dilutes the standard even

further.

17. Elaborating on her submission, the learned counsel submitted that as per the erstwhile regulations, in the subject General Surgery-Practicals,

which consisted of the papers on Orthopaedic Surgery and General Surgery, a student getting 50% aggregate in both the papers combined was

declared as having passed. Whereas under the impugned guidelines, the student has to get 50% aggregate in Orthopaedic Surgery and 50%

aggregate in General Surgery in order to be declared passed in the subject General Surgery. Earlier, it was always possible for a student to skip

Orthopaedic Surgery and concentrate only on General Surgery and obtain his Medical Degree. In today's scenario of ever-increasing road

accidents, trauma care is a must for the purpose of saving lives and limbs of victims of such accidents, and a doctor who does not have the

rudimentary knowledge of Orthopaedic Surgery would only be a liability in any hospital. The statutory Academic Body of the appellant-University

had only such things in mind while bringing about the new guideline, under which a student has to invariably concentrate on both the subjects in

order to secure a pass and obtain his Degree. Thus, according to the learned counsel, the guidelines could only be for the betterment of the overall

standard of medical education, and no malice or ill-will can be attributed to the noble objective of the appellant-University. The learned single

Judge failed to take note of the fact that under the earlier examination pattern, a medical student could obtain a pass and a Medical Degree, totally

ignoring a particular branch of medicine, and it is only to rectify this vital anomaly and to ensure that a person who acquires a M.B.B.S. Degree

comes out as a fully qualified, well-rounded professional who is fully equipped to react to any kind of emergency, the new guideline was

introduced. According to the learned counsel, the failure on the part of the learned single Judge to deal with this issue which is of primary

importance to the decision in this case has resulted in complete miscarriage of justice. Learned counsel further submitted that having observed that

Courts should be slow in interfering with in academic matters since the Courts are not experts in the subject, the directions issued by the learned

single Judge amounted to interference into the recommendations made by the Standard Academic Body, which in turn, had acted on the

recommendations of the Board of Studies of the University, which consists of experts in the field of medical education. According to the learned

counsel, the finding of the learned single Judge that the impugned regulation was contrary to the guidelines framed by the Medical Council of India,

was erroneous especially in the absence of a discussion on the effect of the impugned regulation and the purpose for which it was brought in.

18. According to the learned counsel, the learned single Judge has committed grave error in holding that the students studying in the appellant-

University who were subject to the impugned regulation was discriminated against when compared to those studying in other Universities since no

other University in the country has such a regulation. According to the learned counsel, the Medical Council of India does not postulate that the

Universities throughout the country should have the same regulations and that there cannot be any deviation. The role of the Medical Council is

only to prescribe minimum standards of medication in the Universities throughout the country, and the Universities are at liberty to fix their own

guidelines. That being so, according to the learned counsel, there can be no question of discrimination when a higher standard is prescribed by the

appellant-University, especially when it is intended to improve the overall standard of medical education.

19. As far as the doctrine of legitimate expectation is concerned, it is the submission of the learned counsel that though at the time when the writ

petitioners were admitted to the First Year M.B.B.S. Course in 2006-2007 they were not intimated about the new regulation which was made

known only in September, 2010, it cannot be disputed that medical education should not be allowed to be static and unchangeable. According to

the learned counsel, medical education should be dynamic and ever evolving so as to meet the latest trends, taking into account the latest research

and development in the field of medical education. Having said that, it is not true that the students in this case were kept in dark about the new

regulation. In fact, they were informed well in advance about the change of pattern of the examination and they had agreed to the same and

appeared for the examination under the new regulation. It was only after writing the examination and having failed therein, they subsequently take a

stand that they were not informed about the new regulation earlier, which cannot be and ought not be permitted. As stated earlier, the impugned

guideline has been brought in by a body of experts in the field of medical education, who had thought it fit to introduce such a regulation. The

impugned regulation was first proposed by the Board of Studies, which is constituted by the Statutes of the University. The Standing Academic

Board, which is the highest academic body in the University, has chosen to accept the recommendations of the Board of Studies and thus, the

impugned guidelines came to be introduced. According to the learned counsel, the learned single Judge ought to have considered this fact and

refrained from interfering with a decision taken by a body of experts, instead of arriving at a conclusion that the decision of the Standard Academic

Board, which is the highest academic body in the appellant-University, is arbitrary and would create great imbalance. The learned single Judge

ought to have decided whether the impugned regulation is intended to improve the quality or diluting the standards of medical education and unless

it diluted the standard of medical education, it could not and ought not have been termed as repugnant or contrary to the guidelines framed by the

Medical Council of India, since it is well settled that a decision intended to bring in betterment of standards cannot be termed as contrary or

repugnant to the guidelines framed by the Medical Council of India. The learned Counsel in support of her submissions placed reliance on the

following decisions:

(i) Dr. Ambesh Kumar Vs. Principal, L.L.R.M. Medical College, Meerut and Others,

(ii) Dr Preeti Srivastava and Another Vs. State of M.P. and Others,

(iii) Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others,

20. On the other hand, the learned counsels appearing for the individual students would contend that there are more than 150 Universities in India

offering Medical degrees and diplomas, who are controlled and regulated by the MCI and the appellant University is one such University who are

bound by the regulations framed by MCI, which is a statutory body created by a Central Legislation and the field is completed occupied by entry

66 of list 1 of schedule VII of the Constitution and therefore, the impugned regulation passed by the respondent University is wholly without

jurisdiction. It is further submitted that even as per the impugned guidelines 50% aggregate is sufficient to secure a pass in theory papers and no

independent scoring of 50% in each theory paper including Orthopaedics has been insisted, but strangely only in practicals 50% aggregate has

been separately prescribed for General Surgery and Orthopaedics. This prescription has no nexus to the objects sought to be achieved and the

mode of distribution of marks is totally unreasonable apart from being contrary to the mandatory regulation of MCI. It is further contended that the

impugned guidelines suffer from gross discrimination, unreasonableness, and violative of Article 14 of the Constitution of India. It is further

submitted that only six percent of the medical students in India, who are studying in the appellant University have been treated differently and the

same is highly arbitrary and discriminatory. It is further submitted that students who have passed from other Universities, which strictly followed the

MCI Regulation have been permitted to apply for post graduate courses conducted/offered by the appellant University, though they cannot be

treated to having passed their final M.B.B.S. if the impugned guidelines are applied. Further, it is contended that no record was placed before the

learned Single Judge who heard the batch of writ petitions, to establish that there was deliberation and discussion among the members of the

academic council before resolving to introduce the impugned guidelines. Further, the writ petitioners have invoked the doctrine of legitimate

expectation and state that they having joined the M.B.B.S. course during 2006-07 and have undergone Orthopaedics clinical posting from August

2007 onwards upto middle of 2010, the impugned guideline has been introduced at the fag end of the course in February 2011 and they having

relied on the representation made by the appellant University and the denial of the expectation that they shall be governed by the regulations and

guidelines which were in vogue when they joined the course has worked to their detriment. It is further submitted that the impugned guidelines

made applicable for the final M.B.B.S. students was given effect from August 2011 and the regular final year part II examination for the 2006-07

batch was conducted during February 2007 and the examinations conducted in August 2007 is a supplementary examination meant for students

who have either not succeeded in the main examination or the students who have lost six months due to arrears in the first year M.B.B.S. course.

Therefore, it is conducted that the appellant University adopted a different regulation for the main examination held in February 2007 and applied

the impugned regulation dated 14.01.2011 for the supplementary examinations and the same is arbitrary and unreasonable. Further, by relying

upon a circular dated 09.08.2011 of the appellant University, it is submitted that the University themselves stated that introduction of separate

theory paper will increase the burden on the students and decision for such revocation has been taken by academic Board on 14.06.2011, but the

same was not implemented during the examination held in August 2011. Further, it is contended that the term #pass# as explained in regulation

12(4) of the MCI's Regulation has been given a go-by which cannot be done and no guideline can be framed inconsistent with the MCI

Regulations. On the above grounds, the writ petitioners sought for quashing the said regulation.

21. The learned counsel appearing for the MCI fairly submitted that before the learned Single Judge, MCI did not take any specific stand as

regards the validity or otherwise of the impugned regulation, but placed before the Court the scheme of the Act and the various decisions of the

Hon'ble Supreme Court upholding the Supremacy of the power of MCI in the matter of Medical Education. It is submitted that in these appeals

for the first time MCI has taken a stand and filed a counter affidavit wherein they have stated that these stipulations in the impugned guidelines

requiring to obtain 50% marks in theory and oral (viva voce) separately is certainly higher requirement than the minimum requirement laid down by

MCI and the same is permissible in law.

22. We have elaborately heard the learned counsel for the appellant University and the learned Advocate General and the learned counsels for the

respondents/writ petitioners and carefully considered the materials available on record.

23. Before we frame the questions which arise for consideration in these appeals/writ petitions, it would be necessary to take note of the following

facts. The respondents in all these writ appeals and petitioners in some of the writ petitions are all batch I and batch II final year M.B.B.S.

students. The other bunch of writ petitions were filed by the first year M.B.B.S. students who have challenged the regulation dated 14.01.2011

passed by the appellant University. At this stage, we may point out there were another batch of writ petitions filed by the first year M.B.B.S.

students who joined the course in the academic year 2010-11. As stated above, the hearing of these batch of cases commenced on 09.11.2011,

the learned Advocate General as well as the learned counsel appearing for the appellant University informed this Court that pursuant to certain

directions given by the Government of Tamil Nadu by their letter dated 04.11.2011, the governing council of the appellant University conducted a

special meeting on 08.11.2011 to discuss matter relating to pattern of evaluation of first year M.B.B.S. examinations for the August 2011

examinations and the University took a decision not to implement the changes in the evaluation pattern of first M.B.B.S. examinations for August

2011 examinations. At this stage, we may refer to the letter of the Principal Secretary to Government, Health and Family Welfare Department,

Chennai -9 addressed to the Registrar of the appellant University dated 04.11.2011 and the decision taken by the Special Governing Council

meeting held on 08.11.2011.

D.O.Letter No.39811/MCA1/2011-2, dated 04.11.2011 Dear Dr.Sudha Seshaiyyan,

Sub: Medical Education # Pattern of Evaluation of MBBS course # Certain representations # Tamil Nadu Dr.M.G.R. Medical University view

sought for under Chapter III of visitation # Regarding.

Ref: 1.From the President, Tamil Nadu Government Doctors Association, Theni District representation dated:29.10.2011.

2. D.O.Letter No.39811/MCA2/2011-1, dated 25.10.2011.

1. I invite attention to the references cited above.

2. The Government after looking into the matter, considers that status quo may be brought back in the norms for passing the 1 year MBBS

examination as per the Medical Council of India norms in the larger interest of the students.

3. I request you to place the matter before the Governing Council for a suitable decision.

4. The action taken in this matter may be communicated to Government before 8.11.2011.

Special Governing Council Meeting Held on 08.11.2011 Agenda:

To discuss matter related to pattern of evaluation of I MBBS course in association with representations received from Students and parents and

the communication received from the Government of Tamil Nadu dated 04.11.2011 # Regarding.

The Governing Council discussed the issue in detail taking cognizance of the representations from students, parents and doctors in conjunction with

the views given by the State Government in their letter dated 04.11.2011. The Governing Council felt that the steps taken by the University in

improving the academic standards are in the long term interest of the student community and health system. However, considering the fact that the

time frame for implementation of such changes and acclimatization time for I MBBS students may not have been adequate, there is a case to

relook at the implementation of the changes for the current examinations of August 2011.

Hence, it is resolved Not to implement the changes in the evaluation pattern of I MBBS examinations for the August 2011 examinations.

It is reiterated that the University would indicate its stand that enhancement of academic standards is well within its powers, conferred under Entry

25 of Concurrent list, before the Court of Law, as this deferment is for the current examinations only.



24. On a perusal of the above, it is seen that though the appellant University took a decision and brought about the impugned regulations, abruptly

they have decided not to implement the same for the first M.B.B.S. August 2011 batch solely based on the directive issued by the Government in

their letter dated 04.11.2011. However, neither the learned Advocate General nor the learned counsel appearing for the appellant University do

not have an answer to the query as to why the same decision should not be made applicable to the other students as well. In any event, in view of

the decision taken by the University on 08.11.2011, the said batch of writ petitions were permitted to be withdrawn by passing the following

order:-

When all these writ petitions were taken up for hearing, learned counsel appearing for the University, and the learned Advocate General, produced

before us a resolution passed by the Special Governing Council of the Tamil Nadu Dr.M.G.R.Medical University in the meeting held on 8th

November, 2011, in which it has been decided not to implement the changes in the evaluation pattern of First Year M.B.B.S. Course for the

August 2011 examinations. This decision appears to have been taken on the basis of the instructions given by the State Government in their letter

dated 04th November, 2011. Learned counsel appearing for the University fairly submitted that the First Year M.B.B.S. Students, who are the

examinees of the August, 2011, will be governed by the MCI Regulations.

2. In the aforesaid premises, learned counsel appearing for the respective petitioners in all these writ petitions seek permission to withdraw the writ

petitions. Accordingly, all the writ petitions are dismissed as withdrawn. It is made clear that on the basis of the guidelines issued by the University,

those students, who were not allowed to attend the classes or their attendance has not been taken into consideration, shall be deemed to be in

attendance/have attended the classes during that period. No costs. Consequently, connected miscellaneous petitions are closed.

25. Be that as it may, as we are called upon to decide the validity of the impugned regulation of the appellant University sofar as it was made

applicable to other batch of students, we proceed to consider the same.

26. The appellant University by their communication dated 03.09.2010 informed the Deans/Principals of the Medical Colleges affiliated to it that

the Board of studies in final M.B.B.S. degree course in the meeting held on 03.05.2010 recommended various academic issues relating to final

M.B.B.S. degree course and such recommendations were approved in the 39th meeting of the Standing Academic Board held on 21.06.2010 and

approved by the Governing Council in its meeting held on 14.07.2010. The guidelines for clinical/viva voce examination in the subject general

surgery was subject matter of challenge in the writ petitions. For better appreciation, the same is quoted herein below:

**SUBJECT: GENERAL SURGERY**

1) There shall be Six Examiners, Four General Surgery (Two Internal + Two External Examiners) + Two Ortho (One Prof. Of Ortho from the

same college and other from Affiliated Medical Colleges of this University).

2) There shall be four examiners working as two pairs with 1 internal and 1 external as one pair for surgery and two internals as a pair for

Orthopaedics to conduct the examination for two batches of students.

No. of Cases Time Maximum Minimum CLINICAL-I

for examination &

case sheet writing

Long Case 1 45 min 50 General Surgery

Short Case 2 Each 10 min 50

Total 100 50 Orthopaedics

Short case 2 Each 10 min 50 25

Total 150 75 Viva Voce

X-rays, 50 Viva I

Instruments,

Specimen,

Operative

Surgery and

Ortho (4 +

1)

Recent 50 Viva II

Advances

(OSCE)

Minimum 5

short case

5x10

(vii)

Orthopaedics

$$3 \times 10 = 30$$

(viii) Surgery

$$2 \times 10 = 20$$

Total 100 50

1) Clinical Examination shall be conducted from 8.30 a.m. to 1.30 pm.

2) The candidates shall be present in the Examination Hall half an hour before the commencement of the Clinical Examinations.

3) Number of Candidates to be examined per day not to exceed 24.

4) The Candidates should secure the minimum required marks in each section.

5) If the candidate fails to secure the minimum in any of the sections, he/she is deemed to have failed in the whole examination.

27. The Medical Council of India (MCI) which has a statutory obligation in maintaining highest standard in Medical Education, by virtue of powers

conferred u/s 33 of the Indian Medical Council Act, 1956, framed rules laying down minimum standards of infrastructure, teaching and other

requirements for conduct of the medical courses including norms relating to course content, duration, distribution of teaching and training days,

conduct of examination, evaluation pattern etc. It cannot be disputed that the regulations/stipulations/guidelines framed by the MCI are binding on

all Medical Universities and if any state enactment or rule or regulation framed by any Medical University in relation to conduct of Medicine

course, to the extent they are inconsistent with the MCI Act/Regulation/Rule would be repugnant by virtue of Article 254 of the Constitution of

India (see : Dr Preeti Srivastava and Another Vs. State of M.P. and Others, .

28. In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956, the MCI has framed Medical Council of India

Regulations on Graduate Medical Education, 1997, (as amended upto November 2010) Regulation 12 is the examination regulation and regulation

12(4) would be relevant for the purpose of this case which deals with Distribution of Marks to various disciplines and the relevant portion of this

regulation is quoted herein below:

## PART-II

Each paper shall have two sections. Questions requiring essay type answers may be avoided.

(a) Medicine :

Theory- Two papers of 60 marks each Paper 1-120 marks

General Medicine Paper II- General Medicine

(including Psychiatry, Dermatology and S.T.D.)

(Shall contain one question on basic sciences and allied subjects)

Oral (Viva) Interpretation of X-ray ECG, etc. 20 marks

Clinical (Bed side) 100 marks

Internal assessment (Theory-30; Practical-30) 60 marks

Total 300 marks

(b) Surgery:

Theory-Two papers of 60 marks each Paper-1-120 marks

General Surgery (Section 1) Orthopaedics

(Section 2)

PAPER II-General Surgery including

Anaesthesiology, Dental diseases and Radiology.

(shall contain one question on basic sciences and allied subjects)

Oral (Viva) Interpretation of Investigative data 20 marks

Clinical (Bed Side) 100 marks

Internal assessment 60 marks

(Theory-30; Practical-30) 60 marks

Total 300 marks

Paper 1 of Surgery shall have one section in Orthopaedics. The questions on Orthopaedic Surgery be set and assessed by examiners who are

teachers in the Orthopaedic surgery.

(c) Obstetrics and Gynaecology Theory

Theory Two papers of 40 marks each Paper I- 80 marks

Obstetrics including social obstetrics. Paper II

Gynaecology, Family Welfare and Demography

(Shall contain one question on basic sciences and allied subjects)

Oral (Viva) including record of delivery 30 marks

cases(20+10)

Clinical Internal assessment (Theory-30; 60 marks

Practical-30)

Total 200 marks

(d) Pediatrics : (Including Neonatology)

Theory : One paper 40 marks

(Shall contain one question on basic sciences and allied subjects)

Oral (Viva) 10 marks

Clinical 30 marks

Internal assessment (Theory-10; Practical-10) 20 marks

Total 100 marks

Pass : In each of the subjects a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in

Practicals/ clinicals.

29. The grievance of the students both in the first M.B.B.S. as well as final M.B.B.S. is that the guideline framed by the appellant University is

inconsistent to regulation 12(4) of the MCI regulation and therefore, the same is repugnant. Further it is contended that the impugned guideline is

arbitrary and unreasonable and violative of Article 14 of the Constitution and the students having joined the course in 2006-07 having been

informed that the evaluation of the examination would be in accordance with the MCI Regulation had a legitimate expectation that such regulation

shall be applicable till they complete the course and therefore, the appellant University are not justified in changing the evaluation pattern

midstream. That apart, the students in their writ petitions have pointed out various instances to justify their stand that the impugned guidelines suffer

from the vice of gross discrimination and unreasonableness and violative of Article 14 of the Constitution.

30. On the contrary, the appellant University would state that the guidelines framed by them are not repugnant to the MCI Regulations, the

contention that the guidelines have been brought retrospectively is erroneous and the only intention of the University is to promote higher standards

as the University had assessed from the statics that for nearly 20 years M.B.B.S. students were skipping the orthopaedics subject which is a very

essential subject and no prejudice or malafides can be attributed against the University and experts applied their mind and considering the fact

every Doctor should have knowledge about the entire human body, they have brought in the regulation in the interest of the general public. As the

University is entitled to enhance academic standards over and above prescribed by the Central body, the plea raised by the writ petitioners that the

guidelines are repugnant is without any basis.

31. It is on these rival contentions, we have to decide the following questions:-

i) Whether the impugned guidelines framed by the appellant University is inconsistent/repugnant to regulation 12(4) of the Medical Council of India

Regulations on Graduate Medical Education, 1997, (as amended upto November 2010)

ii) Whether the action of the appellant University in introducing the impugned guidelines is discriminatory, arbitrary and violative of Article 14 of the

Constitution of India.

iii) Whether the impugned guidelines has any nexus to the object of enhancing academic standards.

32. Decision on Question No.1:-

Entry 66 of List 1 of the VII schedule to the Constitution confers exclusive power on the Parliament to make law in respect of co-ordination and

determination of standards in institution for higher education or research and scientific and technical institutions. Medical education falls within the

scope of Entry 66 and Parliament has exclusive power to make laws for the purpose of determination of standards in medical institutions. In terms

of Article 246(2), notwithstanding anything in clause 3 of Article 246, parliament, and subject to clause 1, the legislature of any State also, have

power to make laws with respect to any of the matters enumerated in the list III in the VII schedule which is the concurrent list and Entry 25 deals

with education, including technical education, medical education and Universities subject to the provisions of the Entries 63, 64, 65 and 66 of List I

: vocational and technical training of labour. In terms of the language contained in clauses 2 & 3 in Article 246, the power of the Union enumerated

in List I shall prevail over the State power as enumerated in List II and III. In exercise of power conferred on the Union the Medical Council Act,

1956, was enacted and regulations were framed under that for the purpose of regulating the medical education in the country and such other

matters. In exercise of the powers u/s 33 of the Indian Medical Council Act, regulations have been framed namely, the Regulation on Graduate

Medical Education 1997, which has been amended upto November 2010, which shall be applicable and binding upon all institutions offering

courses in Medical Education.

33. In Dr.Preeti Srivastava"s case, referred supra, the Constitution Bench of the Hon"ble Supreme Court was dealing with the issue relating to

doing away with cut off percentage in respect of reserved category candidates, who applied for admission to post graduate medical courses. The

Hon"ble Supreme Court while deciding the question raised in the said case, also examined the correctness of the other decisions rendered earlier

and while doing so, held that the regulations framed by the MCI are binding and the States cannot in exercise of power under Entry 25 of List III

make rules and regulations which are in conflict or adversely impinge upon the regulations framed by MCI, since the standards laid down are in the

exercise or power conferred under Entry 66 of List I, the exercise of that power is exclusively within the domain of the Union Government and the

power of the States under Entry 25 of List III is subject to Entry 66 of List I. It was further held that any power exercised by the State in the area

of education under Entry 25 of List I will also be subject to any existing relevant provisions made in that connection by the Union Government

subject of course to Article 254.

34. In *Ajay Kumar Singh and Others Vs. State of Bihar and Others*, the Supreme Court held that the power of the MCI to prescribe minimum

standards of Medical Education at P.G. Level was only advisory in nature and a binding character. This judgment was disagreed and overruled in

*Preeti Srivastava's* case, and it was held as follows:-

55.....The universities must necessarily be guided by the standards prescribed u/s 20(1) if their degrees or diplomas are to be recognised under the

Medical Council Act. We, therefore, disagree with and overrule the finding given in *Ajay Kumar Singh and Others Vs. State of Bihar and Others*,

to the effect that the standards of postgraduate medical education prescribed by the Medical Council of India are merely directory and the

universities are not bound to comply with the standards so prescribed.

56. In *State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others*, the provisions of the Indian Medical Council Act and the

regulations framed for undergraduate medical courses were considered by the Court. The Court said that while Regulation I was mandatory,

Regulation II was only recommendatory and need not be followed. We do not agree with this line of reasoning for the reasons which we have set

out above.

35. In a recent decision of the Hon"ble Supreme Court *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, ,

the Hon"ble Supreme Court was considering the question as to whether the eligibility criteria for admission to Engineering courses stipulated under

the statutory rules and regulation of the State Government/University could be relaxed or ignored and candidates who do not meet such eligibility

criteria can be given admission on the ground large number of seats have remained unfilled in professional colleges, if such candidates possess

minimum eligibility prescribed under the norms of the Central Body (AICTE). The Hon"ble Supreme Court after taking note of the decisions

rendered in *Preeti Srivastava*, *S.V.Pradeep*, *Adiyaman* summarize the position emerging from those decisions on the following terms:

(i) While prescribing the eligibility criteria for admission to institutions of higher education, the State/University cannot adversely affect the standards

laid down by the central body/AICTE. The term #adversely affect the standards# refers to lowering of the norms laid down by the central

body/AICTE. Prescribing higher standards for admission by laying down qualifications in addition to or higher than those prescribed by AICTE,

consistent with the object of promoting higher standards and excellence in higher education, will not be considered as adversely affecting the

standards laid down by the central body/AICTE.

(ii) The observation in para 41(vi) of *Adhiyaman*<sup>2</sup> to the effect that where seats remain unfilled, the State authorities cannot deny admission to any

student satisfying the minimum standards laid down by AICTE, even though he is not qualified according to its standards, is not good law.

(iii) The fact that there are unfilled seats in a particular year, does not mean that in that year, the eligibility criteria fixed by the State/University

would cease to apply or that the minimum eligibility criteria suggested by AICTE alone would apply. Unless and until the State or the University

chooses to modify the eligibility criteria fixed by them, they will continue to apply in spite of the fact that there are vacancies or unfilled seats in any

year. The main object of prescribing eligibility criteria is not to ensure that all seats in colleges are filled, but to ensure that excellence in standards of

higher education is maintained.

(iv) The State/University (as also AICTE) should periodically (at such intervals as they deem fit) review the prescription of eligibility criteria for

admissions, keeping in balance, the need to maintain excellence and high standard in higher education on the one hand, and the need to maintain a

healthy ratio between the total number of seats available in the State and the number of students seeking admission, on the other. If necessary, they

may revise the eligibility criteria so as to continue excellence in education and at the same time being realistic about the attainable standards of

marks in the qualifying examinations.

36. Thus, the Hon'ble Supreme Court held that by prescribing eligibility criteria for admission to institution of higher education, the State/University

cannot lower the norms laid down by the Central body and prescribing higher standards for admission by laying down qualification in addition to or

higher than prescribed by the Central body will not be considered to adversely affect the standards laid down by the Central body.

37. In the case on hand, we are not concerned with eligibility criteria for admission, but dealing with the examination regulations and distribution of

marks to various disciplines. Admittedly, M.B.B.S. seats have been reserved in all colleges in the country for all India quota in which candidates

throughout the country compete for seats. Similarly quota has also been prescribed for post graduate courses as well. Therefore, MCI being



conscious of the fact that there should not only be a uniform pattern of education, but uniform examination regulations which deals with attendance,

internal assessment, University examination and distribution of Marks to various disciplines framed Regulation. In the earlier part of this order, we

have extracted regulation 12(4) of the MCI Regulation. A perusal of the said regulation makes it clear that a candidate would be declared pass in

each of the subject if he/she obtained 50% in aggregate with a minimum of 50% in theory including orals and minimum of 50% in

practicals/clinicals. These regulations having been framed by a Central body are not merely directory, but are binding on the appellant University.

Therefore, the University may not justified in framing a regulation which is inconsistent with the MCI Regulation.

38. On a careful reading and comparison of Regulation 12(4) of MCI Regulation and the impugned guidelines issued by the Appellant University, it

is prima facie clear that the manner in which a candidate would be declared to have been passed, has been modified by the appellant University,

thus being inconsistent with the MCI Regulation. The appellant University seek to justify their action by stating that the stipulation in the guidelines

framed by the appellant does not lower the norms laid down by MCI, but has fixed higher standards in order to achieve excellence in education.

On a perusal of the impugned guidelines framed by the appellant University, we fail to understand as to how it would satisfy the test of prescribing

higher standards. As noticed above, the MCI Regulation declares a candidate to have passed if in each of the subject he/she has obtained 50% in

aggregate with a minimum of 50% in theory including orals and minimum of 50% in practicals/clinicals. Therefore, by prescribing a guideline and

dividing the clinical subject into two namely general surgery and orthopaedics and prescribing 50% mark in each is undoubtedly in conflict with the

regulation 12(4) of the MCI Regulation and there is no material to establish that by virtue of the impugned regulation, the standards of education

would improve. After having gone through the facts of the case, we have found that by virtue of the impugned guidelines an anomalous situation has

arisen since candidates who have undergone their M.B.B.S. course in any other University, having been declared pass by applying the MCI

guidelines would be not qualify to apply for post graduate course if the guideline of the appellant University is applied to their cases yet on account

of the All India Quota made available, such candidates are permitted to apply for such courses, though they do not satisfy the guidelines of the

appellant University.

39. In Maharashtra University of Health Sciences represented by Deputy Registrar Vs. Paryani Mukesh Jawaharlal and Others, , the Hon"ble

Supreme Court, considered the interpretation of Regulation 12(2) and 12(4) of the MCI Regulations. The Hon<sup>ble</sup> Supreme Court held that any

regulation made by Universities which are inconsistent with the MCI Regulations will not be valid to the extent of inconsistency. Reliance was

placed on the decisions in Adhiyaman, Preeti Srivastava and MCI vs. State of Karnataka. Further held that if the regulation of any University

merely implements or makes it explicit what is implicit in Regulation 12(4) of the MCI Regulation, then the same will be valid and binding.

Paragraph 19 & 20 of the said judgment would be very relevant for the purpose of this case and quoted herein below:

19. The scheme of MCI Regulation 12 also makes it clear that there will be internal assessment as well as the external assessment (University

examination) in regard to theory as well as practicals. Clause (2) of MCI Regulation 12 makes it clear that in addition to providing the eligibility to

appear in the University examination, the internal assessment also provides a weightage to an extent of 20% of the total marks in each subject.

Clause (4) of MCI Regulation 12 makes it clear that for passing in each subject, a candidate must obtain 50% of marks in the aggregate. There is

no controversy in regard to what is meant by aggregate. It is the aggregate of external examination marks and internal assessment marks. Where

the maximum of 100 marks are for theory papers, 20 marks are for oral, 40 marks are for practicals, in all 160 for externals and 40 marks are for

internal assessment, the aggregate is 200. A candidate should secure in all a minimum of 100 marks out of 200. The requirement relating to passing

in aggregate complies with sub-clause (iv) of Clause (2) of Regulation 12, as internal assessment marks (secured out of 40 marks, which is 20% of

total marks) are also counted.

20. The controversy is in regard to the method of calculating the passing marks for the other two heads of passing, namely, #theory including

orals# and #practicals#. The scheme of the MCI Regulations requires the student to pass the University examination (externals) with 50% in theory

(including oral) and 50% in practicals, and also secure 50% of marks in the aggregate of the total marks for external examination and total marks

for internal assessment.

40. From the perusal of the above passage, it is evidently clear that as per MCI Regulation passing in each subject a candidate must obtain 50% of

the marks in the aggregate. The method of calculating the passing marks states that theory including orals and practicals shall be taken into

consideration. However, the impugned guidelines issued by the appellant University has given a complete go-by to such requirement and when the

provisions of Regulation 12(4) are clear and unambiguous the appellant University alleging that it is enhancing the standards has in fact set at naught

the Regulation of the MCI. Ultimately, the Hon'ble Supreme Court held that a student has to secure 50% of the total marks for theory with orals,

50% of marks for practicals/clinicals and 50% of the aggregate (total of external and internals) and candidate must have 35% internal assessment

for eligibility to appear for the University examination. Therefore, the crux of the decision rendered by the Hon'ble Supreme Court is that the

aggregate mark in practicals and clinicals has to be taken together as 50% and there is absolutely no scope for the appellant University to divide

the clinical subject into two stipulating minimum pass mark in each of the subject. This undoubtedly, is in direct conflict and inconsistent with the

MCI Regulations. Therefore, in exercise of the powers under Entry 25 in List III, the appellant University cannot introduce a guideline which

contradicts the MCI Regulation or a guideline inconsistent with the criteria fixed by MCI.

41. In view of the above, we have no hesitation to hold that the impugned guidelines issued by the appellant University is inconsistent with

Regulation 12(4) of the MCI Regulation and the same cannot be stated to be prescribing higher standards. Accordingly question No.1 is decided

against the appellant University.

42. Decision on Question No.2:-

For the purpose of answering this question, it would be essential to look into certain facts. It is stated that about 2300 students are admitted to the

M.B.B.S course in institutions which are affiliated to the appellant University and only such of those students have been put to peril by virtue of the

impugned guidelines. It is stated that about 35000 students all over India appear for the final M.B.B.S Part II examination and only 6% of the said

student community have been affected on account of the impugned guidelines. It has not been disputed that institutions like AIIMS, JIPMER,

Maharashtra University of Health Sciences, Annamalai University and other deemed Universities in Tamilnadu have been following the MCI

Regulations. It has been brought to our notice that students who have completed M.B.B.S. Course from other Universities which follow MCI

Regulation have been permitted to undergo internship in the colleges affiliated to the appellant University and in many cases if the impugned

guidelines of the appellant University is applied to such candidates they have to be declared as failed candidates. However those candidates have

been permitted to undergo internship. The learned counsel appearing for the appellant does not deny the fact that such students have been

permitted to undergo internship, but states that it is done in rarest of rare case. Further, students on completion of their M.B.B.S course from other

Universities which follow MCI Regulation are permitted to apply for and secure admission to post graduate courses offered by the appellant

University though such candidates are deemed to have failed in the M.B.B.S course by applying the impugned guideline.

43. In our view, these facts clearly established that the students undergoing the courses under the appellant University have been discriminated and

treated differently from those candidates who have or had undergone M.B.B.S course from other Universities. Therefore, the action of the

appellant University does not satisfy the test of reasonableness and it offends Article 14 of the Constitution.

44. Yet another factor which has to be taken into consideration, is that the final year students have all joined the M.B.B.S course during 2006-07

and as per the Regulations of MCI, on phase Distribution and Timings of Examination details have been given and for subject Orthopaedics, the

candidates are required to undergo the course for four weeks in the fifth semester, four weeks in the 6th semester and two weeks in the 9th

semester. Admittedly, these postings are over for the respondents/writ petitioners during 2010 and thereafter, the impugned guidelines have been

brought into force in February 2011. This fact is sufficient to demonstrate the arbitrariness committed by the appellant University. Further, the

Board of studies in its meeting held on 03.05.2011, recommended various academic issues relating to 3rd M.B.B.S degree course which were

approved by the Standing Academic Board on 14.06.2011 and accepted by the Governing Council on 14.06.2011. In the said meeting, a

decision was taken to re-approve the decision of the Standing Academic Board held on 22.06.2010 to have separate pass mark in the sub-

branches, namely, practical for General Surgery and Orthopaedics. At this stage, it would be worthwhile to quote the decision taken :-

The Standing Academic Board has again approved that in the subject Surgery including Orthopaedics of Final MBBS Degree course, the separate

pass mark in the sub-branches viz., practical for General Surgery and Orthopaedics is the decision of the academic body in order to raise the

standards of the University Examinations. This is in lieu of having a separate paper in Orthopaedics which will be a increased burden on the

students.

Further, it was resolved that, from the next academic year the marking pattern will be as given below:

Maximum Minimum

Theory 200 100

Surgery Clinical 100 50

Orthopaedics Clinical 100 50

Viva-Voce 100 50

Internal Assessment 100 50

(Theory+Practicals) 100 50

45. As seen from the above decision, the academicians were of the firm view that this was in lieu of having a separate paper in Orthopaedics which

will be a increased burden on the students. However, the appellant though took a decision on 09.08.2011, did not implement this resolution during

the examination held in August 2011. The partial modification was approved on 14.06.2011 itself and communicated on 09.08.2011, yet without

applying such modification, the appellant University applied the impugned guidelines, dated 14.01.2011. This action is arbitrary. Further, it is

pointed out that the main examination for final year M.B.B.S course Part II for the 2006-07 batch was conducted during February 2011 and the

examination in August 2011 is a supplementary examination. Thus it appears that the appellant University while conducting the supplementary

examination in August 2011 applied the impugned guideline which was not made applicable for the main exam held in February 2011. The

procedure adopted by the appellant University does not satisfy the touchstone of Article 14 of the Constitution. The above facts are more than

sufficient to hold that the action of the appellant University is arbitrary, discriminatory and violative of Article 14 of the Constitution and

accordingly, question No.2 is answered against the appellant.

46. Decision on Question No.3:-

The last question which has to be decided, is as to whether the impugned guideline issued by the appellant University has any nexus to the object of

enhancing academic standards as pleaded by the appellant. Firstly, it has to be noted that if the endeavour of the appellant is to enhance the

standards, their action or decision should be free from arbitrariness and unreasonableness, such decision cannot be discriminatory. Having held that

the impugned guidelines offend Article 14, that conclusion itself is sufficient to hold that the guideline cannot be stated to have a nexus to the object

sought to be achieved. Before the learned Single Judge, the writ petitioners pleaded that there was no consultative process which led to the issue of

the impugned guidelines and decision appears to have been taken in haste. Even before us, there is no material placed to show that the members of

the Standing Academic Board on being satisfied with the materials placed before it took a conscious decision to implement the impugned

guidelines. The learned counsel for the appellant though produced a booklet containing the minutes of the meeting of the Standing Academic Board

held on 22.12.2010, the same does not reveal as to on what basis the Academic Board came to such conclusion, whether the members of the

Expert Body were convinced that by splitting of the subject it would enhance academic standards remains unanswered.

47. In our view, a change of curriculum could be a positive step leading to enhancement of standards. However, such change of curriculum should

be pursuant to a consultative process, where all experts and all stake holders have to be consulted. Undoubtedly, the most efficient consultation

method is a participatory approach involving all the persons concerned so that a balanced and effective decision could be arrived at. Probably an

attempt has been made by introducing the impugned guidelines to compel students to acquaint themselves with few chapters or subjects. However,

this can at no such of imagination be construed as a step for enhancement of academic standards. Therefore, in our view, the impugned guideline

has not achieved the object for which it was propounded. We should not be mistaken of advocating a principle that higher standards in Medical

Education should not be put in place. We are conscious of fact that in the recent past, there has been a raise in the number of claims made alleging

deficiencies and lack of competence in the Medical field. A Doctor therefore is required to be fully acquainted with the latest developments in the

Medical Science. The learned counsel appearing for the appellant University submitted that for 20 years, the students have been skipping the

Orthopaedic subject. If that be case, where should the Universities start the reformative process and how it should act to ensure that the entire

curriculum and syllabus are covered by all candidates. This definitely requires an in-depth study of the entire procedure and not in the manner done

by the appellant University, which prima facie appears to be a #knee jerk action#.

48. As noticed above, before the learned Single Judge, MCI did not take a definite stand, however, for the first time, a faint plea has been made

by MCI in their counter affidavit filed in W.P.No.23030 of 2011, in paragraph 16, wherein, MCI has stated that higher requirement than the

minimum requirement laid down by the appellant University is permissible in law. We feel that the stand taken by the MCI is not a definite stand,

but appears to be a vague plea. The issue regarding discrimination which we have dealt with while answering question No.2 supra, has not been

addressed by the appellant University, though such plea has been raised by the writ petitioners. Therefore, it would be advisable for the appellant

University in consultation with the MCI to address the issue in depth and if there are statics to show that the students in the past have been skipping

the Orthopaedics subject, how the same should be prevented and certainly not in the manner done by the appellant University by issuing the

impugned guidelines. Hence we are of the view that the impugned guidelines does not have any nexus to the object of enhancing the standards of

Medical Education. Accordingly, question No.3 also is answered against the appellant.

49. For all the above reasons, we hold that:-

i) The impugned guidelines framed by the appellant University is inconsistent/repugnant to regulation 12(4) of the Medical Council of India

Regulations on Graduate Medical Education, 1997, (as amended upto November 2010)

ii) The action of the appellant University in introducing the impugned guidelines is discriminatory, arbitrary and violative of Article 14 of the

Constitution of India.

iii) The impugned guidelines has no nexus to the object of enhancing academic standards.

50. Accordingly, writ appeals are dismissed and the batch of writ petitions are allowed. There shall be no order as to costs. Consequently, all the

connected miscellaneous petitions are closed.