

A

THE STATE OF MAHARASHTRA  
v.  
INDIAN MEDICAL ASSOCIATION AND ORS.

DECEMBER 6, 2001

B

[V.N. KHARE AND B.N. AGRAWAL, JJ.]

*Education :*

C

*Maharashtra University of Health Sciences Act, 1998/The Establishment of New Medical Colleges, Opening of Higher Courses of Study and increase of Admission Capacity in Medical Colleges Regulation, 1993—Sections 64 and 2(21)/Para 3.*

D

*Opening of new Government Medical College in State—Requirement of—To submit an application to the University for obtaining permission from State Government—Applicability—Held, when State Government decides to set up a Government Medical College at a proposed location, it is not required to submit an application for obtaining permission from itself—Such permission is required in case of private management or persons other than State Government—Also such decision of the State Government tantamounts to approval or permission under Section 64 and grant of Essentiality Certificate under Para 3—Further expression 'Management' occurring in Section 64 does not include the State Government and defined meaning of expression 'Management' under Section 2(21) cannot be assigned.*

E

F

*Perspective plan prepared by the University—Binding on the State Government—When State Government decides to set up a Government Medical College at a proposed location—Held, as State Government is not management under Section 64, perspective plan is not strictly binding on it—Such plan binds the State Government qua private management or anybody else excepting the State Government applying for permission of the State Government to open a Medical College—Also serves as a guideline to the State Government which it is expected to abide and any single deviation would not render State Government's decisions invalid.*

G

*Words and Phrases :*

H

*'Management'—Meaning of in the context of Sections 2(21) and 64 of the Maharashtra University Health Sciences Act, 1998.*

**Appellant-State Government decided to set up a Government Medical college. Aggrieved, respondents filed a petition. High Court held the decision to be invalid as the State Government did not submit any application to the University seeking permission of the State Government for establishing a Government medical college under Section 64 of the Maharashtra University of Health Sciences Act, 1998 and also the said decision was contrary to the perspective plan prepared by the university. Hence the present appeal.**

**Allowing the appeal, the Court**

**HELD : 1.1. When the State Government resolves to set up a medical college at a proposed location, it is not required to submit any application to itself for permission to establish a Government run medical college through the University under Section 64 of the Maharashtra University of Health Sciences Act, 1998. [487-C]**

**1.2. Under Para 3 of the Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993 it is mandatory on the part of an institution or a management desirous of establishing a medical college to obtain Essentiality Certificate from the respective State Government or the Union Territory Administration. The requirement of Essentiality Certificate concerns with, among other requirements, the desirability of having the proposed medical college at the proposed location and grant of certificate that adequate clinical material is available as per Medical Council at the proposed medical college, which are required to be decided by the State Government. Thus, the State Government is the only authority under the Regulations to decide the location of a new proposed medical college within the State. For that purpose, the State Government can neither delegate its function to any other authority nor create a statutory authority under a State Act. If it does so, it would be repugnant to the Central Act. However, it is true that the State Government in order to maintain inter or intra regional imbalances within the State and to remove the chances of arbitrariness can lay down guide lines or prepare a perspective plan for its own guidance for selecting locations for a proposed new medical college within the State. [481-B-G]**

**1.3. Another object behind the necessity to obtain the Essentiality**

A Certificate from the State Government under para 3 of the Regulations is that in the event a private management becomes incapable of setting up the proposed medical college or impart education therein, such a Certificate by the State Government casts an obligation on the State Government to take over the affairs of such a private medical college and discharge the obligations of the private management. [491-H; 482-A-B]

1.4. Section 64 provides for procedure for obtaining permission by the State Government for setting up a new medical college and confers exclusive power on the State Government for grant of permission to a management to establish a new medical college. This power is substantially the power of the State Government to grant Essentiality Certificate to a management or an institution who intends to establish a new medical college at a proposed location. Section 64 of the Act read with para 3 of the Regulations shows that the requirement of Essentiality Certificate or approval by the State Government is required when a private management or any other person other than the State Government intends to set up a medical college. The State Government being the authority to accord approval for setting up a medical college within the State cannot apply to itself for grant of approval when it proposes to establish a new medical college within the State. Its decision to set up a Government medical college tantamounts to an approval of permission as contemplated under Section 64 of the Act and grant of Essentiality Certificate to the extent of location of the proposed medical college which is required to be furnished under para 3 of the Regulation. [483-C-F]

1.5. The language of Section 64 is plain and simple. The expression 'management' occurring in Section 64 shows that it refers to a private management other than the State Government when it seeks permission of the State Government to open a new medical college within the State. Further more Section 2 of the Act shows that it starts with the words "in this Act, unless the context otherwise requires .....". If the expression "management" occurring in Section 64 of the Act is given defined meaning contained in Section 2(21), it would mean the State Government is required to apply to itself for grant of permission to set up a government medical college through the University and also for grant of Essentiality Certificate under para 3 of the Regulation. Therefore, the defined meaning of the expression "management" cannot be assigned to the expression

“management” occurring in Section 64 of the Act. In the instant case, the context does not permit or requires to apply the defined meaning to the word “management” occurring in Section 64 of the Act. However, after the government run medical college is established, necessarily there has to be management or body of persons to run the affairs of the medical college and for such a situation the expression “management” as defined in Section 2(21), is contemplated under Section 65 of the Act. [485-D-E]

*K. Balakrishna Rao and Ors. v. Haji Abdulla Sait and Ors.*, [1980] 1 SCC 321 and *Printers (Mysore) Ltd. and Anr. v. Assistant Commercial Tax Officer and Ors.*, [1994] 2 SCC 434.

1.6. There cannot be two laws - one for the State Government and other for private management. But the compliance of requirement of law either by a private management or by the State Government depends upon the object and purpose for which legislature has enacted the law. If viewed in this light, it is manifest that anyone else excepting the State Government or Union Territory, disirous of setting up a new medical college, is required to obtain Essentiality Certificate from the State Government as regards the desirability of proposed location where the medical college is intended to be established. It is within the exclusive domain of the State Government to approve the proposed location where the new medical college is to be established. Similarly, under Section 64 of the Act, the State Government has exclusive power to grant or refuse permission to set up a new medical college which is substantially a grant of Essentiality Certificate under para 3 of the Regulations. The State Government while granting an Essentiality Certificate or permission to establish a new medical college acts as a sovereign and discharges its constitutional obligation. In this context, if the argument of the appellant is accepted, it would mean the State Government is required to apply to itself for permission when it decides to set up a new government run medical college when the State Government is the authority to grant permission to set up a new medical college at a proposed location. Further, the argument that the State Government when it decides to set up a new government run medical college is required to submit an application to the University for grant of permission by the State Government would be repugnant to the object behind para 3 of the Regulations and legislative intent for which Section 64 of the Act has been enacted. [486-B-G]

A *Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta*, [1967] 2 SCR 170, distinguished.

B 2.1. The perspective plan prepared by the University under the Maharashtra University of Health Sciences Act, 1998 for educational development for the location of higher learning is not strictly binding on the State Government when the State Government resolves to set up a Government run Medical College within the State in view of the fact that the State is not the "Management" under Section 64 of the Act. [487-D-E; 493-A]

C 2.2. State Government exercises considerable control over the running of the affairs of the University and inasmuch as the University is prohibited from framing any statutes laying down the qualifications, recruitment, terms of office and conditions of service of employees and officers of the Government run institutions. So the perspective plan prepared by the University under the Act is binding on the State Government  
D qua those who are applicants for grant of permission to open a new medical college under Section 64 of the Act. The State Government being not an applicant for grant of permission under Section 64 of the Act, the perspective plan prepared by the University is not binding on it when it takes a decision to establish a new Government medical college. However,  
E the perspective plan prepared by the University may not be strictly binding on the State Government when it decides to set up its own medical college, but such a perspective plan serves as a guideline indicating the desirability of setting up a medical college by the State Government in a particular region or area on account of either its backwardness or lack of medical facilities in that region or area. Such a guideline helps the State  
F Government in finding out locations when it decides to set up a medical college within the State. The State Government is expected to comply with the perspective plan as far as possible. However, any single deviation from such a guideline by the State Government when it decides to set up its own medical college within the State would not make its decision invalid. In the  
G instant case, there is no deviation from the perspective plan prepared by the University. [489-D; F-H; 490-A-D]

H *Dhananjay R. Kulkarni and Ors. v. State of Maharashtra and Ors.*, [1999] 2 Maharashtra Law Journal, 323 and *Union of India v. Satish Panatal*, [2001] ITR (249), 221, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6167 of 2001. A

From the Judgment and Order dated 13.7.2001 of the Bombay High Court in W.P. No. 3798 of 2000.

Harish N. Salve, Solicitor General, S. Ganesh, U.U. Lalit, Kumbhoni, S.V. Deshpande, Maninder Singh, Ms. Pratibha M. Singh, Ms. Kavita Wadia, Ms. Sunita Sharma, for D.S. Mahra, A.P. Kotie, M.D. Samel, Rajan Narain, Sajjan Narain, S.M. Jadhav for the appearing parties. B

The Judgment of the Court was delivered by

**V. N. KHARE, J.** This appeal which is directed against the judgment of Bombay High Court passed in the writ petition gives rise to following two questions for our decisions— (1) whether the State Government is required to submit an application to the Maharashtra University of Health Sciences (hereinafter referred to 'the University') under Section 64 of the Maharashtra University of Health Sciences Act, 1998 (hereinafter referred to as the 'Act') for obtaining permission from itself, when it decides to establish a government run medical college within the State; and (2) whether the perspective plan prepared by the University under the Act for educational development for the location of higher learning is binding on the State Government when the State Government resolves to set up a government run medical college within the State. C D E

The aforesaid questions arose in the context of the decision taken on 30.8.2000 by the government of Maharashtra to set up a government medical college at Kohlapur. This decision of the government was challenged by the respondents through a Public Interest Litigation before the High Court of Bombay at Aurangabad. The challenge in the writ petition was, *inter alia*, on the ground that the State Government having not submitted any application to the University as required under Section 64 of the Act, the decision taken by the State Government to set up a government run medical college at Kohlapur is invalid, and, that, the resolution of the State Government to set up government run medical college at Kohlapur being contrary to the perspective plan prepared by the University, the impugned decision was illegal. The High Court was of the view that the State Government having not submitted any application for permission of the State Government to the University for establishing a government run medical college at Kohlapur as required under Section 64 F G H

A of the Act, the impugned decision of the government is invalid and further the decision of the State Government to set up a medical college at Kohlapur being contrary to the perspective plan prepared by the University which is binding on the State Government, the impugned decision suffers from legal infirmity. Consequently, the decision of the State Government to set up a government run  
B medical college at Kohlapur was set aside and the writ petition was allowed. It is against the said judgment, the State of Maharashtra has preferred this appeal.

Coming to the first question, the setting up a medical college and the medical education in our country is governed by the Indian Medical Council Act, 1956 and Regulations framed thereunder. In the year 1993, Section 10A, 10B and 10C were inserted in the Indian Medical Council Act by amending  
C Act 31 of 1993. Sub-section (1) of Section 10A provides that no person shall establish a medical college or no medical college shall open a new or higher course of study or training or increase its admission capacity in any course of  
D study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the Act. Sub-section (2) thereof provides that every person or medical college desirous of opening a medical college shall submit to the Central Government a scheme in accordance with the provisions of the Act and the Central Government shall refer the scheme to the Medical Council for its recommendation. Sub-section (3) of  
E Section 10A further provides that on receipt of a scheme by the Medical Council, the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned and thereafter it may consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon  
F to the Central Government. Sub-section (4) of Section 10A enables the Central Government either to approve or disapprove the scheme. Section 33 of the Act empowers the Medical Council to make Regulation for carrying out the purposes of the Act. The Medical Council, in exercise of power conferred by Section 33 read with Section 10A of the Act, has framed Regulation known as 'The Establishment of New Medical Colleges, Opening of Higher Courses  
G of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993 (hereinafter referred to as the 'Regulation'). The Regulation provides the eligibility and qualifying criteria for setting up a medical college. Para 3 of the Regulation runs as under :

H "that Essentiality Certificate regarding the desirability and feasibility

of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration.”

A perusal of para 3 of the Regulation shows that it is mandatory on the part of an institution or a management desirous of establishing a medical college to obtain Essentiality Certificate from the respective State Government or the Union Territory Administration, as the case may be. The requirement of Essentiality Certificate provided under para 3 of the Regulation concerns with among other requirements the desirability of having the proposed medical college at the proposed location. The desirability of having medical college at the proposed location under para 3 of the Regulation is required to be decided by the State Government. Excepting the desirability of location of the proposed medical college and certificate that adequate clinical material is available as per Medical Council of India at the proposed medical college are to be decided by the State Government and all other aspects regarding establishment of a new medical college and imparting of the education therein are covered by the Central Act and Regulations framed thereunder. In other words, in the matter of establishment of a medical college and medical education the field, that is open where a State Government has any role to play is only in regard to decide the desirability of the location of the proposed medical college and grant of certificate that adequate clinical material is available as per Medical Council at the proposed medical college. Thus, the State Government is the only authority under the Regulations to which we are concerned to decide the location of a new proposed medical college within the State. The State Government, therefore, is the only judge to decide where the proposed medical college is to be located. For that purpose, the State Government neither can delegate its function to any other authority nor can create a statutory authority under a State Act. If it does so, it would be repugnant to the Central Act. However, it is true that the State Government in order to maintain inter or intra regional imbalances within the State and to remove the chances of arbitrariness can lay down guidelines or prepare a perspective plan for its own guidance for selecting locations for a proposed new medical college within the State.

Another object behind the necessity to obtain the Essentiality Certificate

A from the State Government under para 3 of the Regulations is that in the event  
a private management becomes incapable of setting up the proposed medical  
college or impart education therein, such a Certificate by the State Government  
casts an obligation on the State Government to take over the affairs of such a  
B private medical college and discharge the obligations of the private manage-  
ment. It is in these context, Section 64 of the Act is required to be read and  
understood. Section 64 of the Act runs as under:

C “ 64. Procedure for permission.— (1) the University shall prepare a  
perspective plan for educational development for the location of insti-  
tutions of higher learning in a manner ensuring equitable distribution  
of facilities of Health Sciences Education having due regard, in par-  
ticular, to the needs of unserved and under-developed areas within the  
jurisdiction of the University. Such plan shall be prepared by the  
Academic Council and shall be placed before the Senate through the  
Management Council and shall be updated every five years.

D (2) No application for opening a new college or institution of  
higher learning which is not in conformity with such plan, shall be  
considered by the University.

E (3) The management seeking permission to open a new college or  
institution of higher learning shall apply in the prescribed form to the  
Registrar of University before the last day of October of the year  
preceding the year from which the permission is sought.

F (4) All such applications received within the aforesaid prescribed  
time limit shall be scrutinised by the Planning Board and be forwarded  
to the government with the approval of the Management Council on  
or before the last day of December of the year, with such recommen-  
dations (duly supported by relevant reasons) as are deemed appropri-  
ate by the Management Council.

G (5) Out of the applications recommended by the University, the  
Government may grant permission to such institutions as it may  
consider right and proper in its absolute discreuon, taking into account  
the Government's budgetary resources, the suitability of the manage-  
ments seeking permission to open new institutions and the State level  
priorities with regard to location of institutions of Health Sciences  
H learning.

Provided however that, in exceptional cases and for the reasons to be recorded in writing, any application not recommended by the University may be approved by the State Government for starting a new college or institution of Health Sciences learning. A

(6) No application shall be entertained directly by the Government for the grant of permission for opening a new college or institution of Health Sciences learning. B

A perusal of Section 64 shows that it provides for procedure for obtaining permission by the State Government for setting up a new medical college and confers exclusive power on the State Government for grant of permission to a management to establish a new medical college. The power of the State Government to grant permission to set up a new medical college under Section 64 of the Act is substantially the power of the State Government to grant Essentiality Certificate to a management or an institution who intends to establish a new medical college at a proposed location. If Section 64 of the Act is read along with para 3 of the Regulations it would show that the requirement of Essentiality Certificate or approval by the State government is required when a private management or any other person other than the State government intends to set up a medical college. The State Government being the authority to accord approval for setting up a medical college within the State cannot apply to itself for grant of approval when it proposes to establish a new medical college within the State. It's decision to set up a government run medical college tantamounts to an approval or permission as contemplated under Section 64 of the Act and grant of Essentiality Certificate to the extent of location of the proposed medical college which is required to be furnished under para 3 of the Regulation. The language of Section 64 is plain and simple. The expression 'management' occurring in Section 64 shows that it refers to a private management other than the State Government when it seeks permission of the State Government to open a new medical college within the State. C  
D  
E  
F

Shri S. Ganesh, learned senior advocate appearing for the respondents brought to our notice the definition of the expression 'management' as contained in sub-section (21) of Section 2 of the Act, which runs as under: G

"Section 2. In this Act, unless the context otherwise requires,—

xxx

xxx

xxx

H

A (21) 'Management' means the trustees, or the managing or governing  
 B body, by whatever name called, of any trust registered under the  
 Bombay Public Trusts Act, 1950 Bom. XXIX of 1950 or any society  
 registered under the Societies Registration Act, 1860 21 of 1800 under  
 the management of which one or more colleges or recognised institu-  
 tions or other institutions are conducted and admitted to the privileges  
 of the University.

C Provided that, in relation to any college or institution established  
 or maintained by the Central Government or the State Government or  
 a local authority such as a Zilla Parishad, municipal council or municip-  
 al corporation, it means, respectively, the Central Government or the  
 State Government or the concerned local authority that is the Zilla  
 Parishad, municipal council or municipal corporation, as the case may  
 be."

D On the strength of the said definition of the expression 'management', it was  
 urged that the word 'management' occurring in Section 64 of the Act shall also  
 includes the State Government and as and when the State Government proposes  
 to set up or establish a government run medical college, it has also to apply  
 to the University for grant of permission by the State government. The question  
 E then arises whether the expression 'management' occurring in Section 64 of  
 the Act would also include the State Government and the State Government  
 is required to submit an application to the University for obtaining approval  
 from itself as and when the State Government decides to establish a govern-  
 ment run medical college within the State.

F In *K. Balakrishna Rao and Ors. v. Haji Abdulla Sait and Ors.*, [1980]  
 1 SCC 321, it was held that a definition clause does not necessarily in any  
 statute apply in all possible contexts in which the word which is defined may  
 be found therein. In *Printers (Mysore) Ltd. and Anr. v. Assistant Commercial Tax  
 Officer and Ors.*, [1994] 2 SCC 434, it was held that it should be remembered  
 G that the provisions which define certain expressions occurred in the Act opens  
 with the words "in this Act unless the context otherwise requires" which shows  
 that wherever the word so defined occurred in the enactment, it is not manda-  
 tory that one should mechanically attribute to the said expression the meaning  
 assigned to it in the definition clause. Ordinarily, where the context does not  
 H permit or where the context requires otherwise, the meaning assigned to it in

the said definition need not be applied.

A  
B  
C  
D  
E  
F  
G

A bare perusal of Section 2 of the Act shows that it starts with the words "in this Act, unless the context otherwise requires....". Let us find out whether in the context of the provisions of Section 64 of the Act the defined meaning of the expression "management" can be assigned to the word 'management' in Section 64 of the Act. In para 3 of the Regulations, the Essentiality Certificate is required to be given by the State Government and permission to establish a new medical college is to be given by the State government under Section 64 of the Act. If we give the defined meaning to the expression "management" occurring in Section 64 of the Act, it would mean the State Government is required to apply to itself for grant of permission to set up a government medical college through the University. Similarly it would also mean the State Government applying to itself for grant of Essentiality Certificate under para 3 of the Regulation. We are afraid the defined meaning of the expression "management" cannot be assigned to the expression "management" occurring in Section 64 of the Act. In the present case, the context does not permit or requires to apply the defined meaning to the word 'management' occurring in Section 64 of the Act. However, after the government run medical college is established, necessarily there has to be management or body of persons to run the affairs of the medical college and for such a situation the expression 'management' as defined in Section 2 (21), is contemplated under Section 65 of the Act. In the context of the provisions of Section 65 of the Act, the management of the government run medical college has to apply for grant of affiliation to the University which may be the State Government. It is not disputed that the State Government (Management) did apply for grant of affiliation to the University which was granted. We are, therefore, of the opinion that the defined meaning of the expression 'management' cannot be assigned or attributed to the word 'management' occurring in Section 64 of the Act. The word 'management' if read in the context of the provisions of Section 64 of the Act, means any one else excepting the State Government applying to a State Government for permission to establish the proposed medical college at proposed location to be decided by the State Government.

H

Shri Ganesh, learned senior advocate, then urged that if we take a view that the word 'management' occurring in Section 64 of the Act refers to a private management or anyone else excepting the State Government, it would mean there are two laws - one for private management desirous of setting up

A a new medical college and the other for the State Government when it decides to establish a new medical college in the State which is not permissible under law, and relied upon a decision in the case of *Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta*, [1967] 2 SCR 170. We do not dispute with the broad abstract preposition of law submitted

B by Shri S Ganesh, learned senior advocate. At the outset, it may be made clear that there cannot be two laws - one for the State Government and the other for private management. But the compliance of requirement of law either by a private management or by the State Government depends upon the object and purpose for which legislature has enacted the law. If viewed in this light, it is

C manifest that anyone else excepting the State Government or Union Territory, desirous of setting up a new medical college, is required to obtain Essentiality Certificate from the State Government as regards the desirability of proposed location where the medical college is intended to be established. It is within the exclusive domain of the State Government to approve the proposed location where the new medical college is to be established. Similarly, under Section

D 64 of the Act, it is the State Government who has exclusive power to grant or refuse permission to set up a new medical college. The grant of approval or permission as contemplated under Section 64 of the Act is nothing but substantially a grant of Essentiality Certificate under para 3 of the Regulations in so far it relates to location of the proposed medical college. The State Government

E while granting an Essentiality Certificate or permission to establish a new medical college acts as a sovereign and discharges its constitutional obligation. In this context, if the argument of learned counsel for the appellant is accepted, it would mean the State Government is required to apply to itself for permission when it decides to set up a new government run medical college when the State

F Government is the only authority to grant permission to set up a new medical college at a proposed location. Further, the argument that the State Government when it decides to set up a new government run medical college is required to submit an application to the University for grant of permission by the State Government would be repugnant to the object behind para 3 of the Regulations and legislative intent for which Section 64 of the Act has been enacted.

G

Coming to the decision in *Superintendent & Legal Remembrancer, State of West Bengal v. Corporation of Calcutta* (supra), cited by learned counsel for the respondents, only this much safely can be stated that its reliance by the

A appellant's counsel is totally misplaced. In the said case, the State of West

H Bengal was carrying on commercial activities as owner and occupier of a

market at Calcutta without obtaining licence as required under Section 218 of the Calcutta Municipal Act, 1951. In that context, it was held by this Court that the State Government was required to take licence under Section 218 of the Calcutta Municipal Act. In the present case, neither para 3 of the Regulations nor under Section 64 of the Act the State Government is required to take permission from itself when it takes a decision to establish a new government run medical college and, therefore, reliance of the said decision is of no help to the case of the respondents.

For the aforesaid reasons, we are of the view that when the Government by a resolution decides to establish a new government run medical college within the State, it is not required to submit any application to the University under Section 64 of the Act for grant of permission by itself.

Coming to the second question whether the perspective plan as prepared by the University was binding on the State government when it decided to establish a government run medical college within the State, Shri Harish N. Salve, learned Solicitor General, appearing for the appellant advanced three arguments. His first argument is that Article 371 (2) (c) does not provide for medical education and it is restricted only to technical education and, therefore, Article 371 (2) (c) has no application in the present case. The second argument is that when the State Government decides to establish its own medical college, and the State Government not being a 'management' within the meaning of 'management' occurring in Section 64 of the Act, and not required to submit any application to the University and, as such, any perspective plan prepared by the University is not binding on it. According to him the perspective plan is binding on the State Government qua private management who is required to submit an application for permission of the State Government to open a new medical college. The third argument is that, in any event of the matter, there was a substantial compliance of the perspective plan when the State Government decided to establish a government run medical college at Kolhapur. Whereas, learned counsel for the respondents brought to our notice Article 371 (2) (c) of the Constitution of India and on the strength of the said provisions it was urged that a perspective plan prepared by the University under Section 64 of the Act being under the mandate of Article 371 (2) (c) of the Constitution and, therefore, was binding on the State Government and any decision by the State Government contrary to the perspective plan would be rendered invalid.

A The first argument of learned Solicitor General is that the expression  
'technical education' occurring in Article 371 (2)(c) of the Constitution is  
distinct and different from 'medical education' and, therefore, Article 371 (2)  
(c) of the Constitution has no application when the University prepared a  
perspective plan under section 64 of the Act. We are not deposed to go into  
B the said argument although the argument appears to be attractive. So far as the  
second and third arguments are concerned, it is necessary to look into the  
provisions of the Act. Section 5 (ww) of the Act provides that the University  
shall comply with and carry out any directives issued by Government from time  
to time, with reference to the powers, duties and responsibilities of the Univer-  
C sity. Section 7 (2) of the said Act provides that the University shall adopt  
Government policy and orders or directions issued from time to time, in regard  
to the reservation for Scheduled Castes, Scheduled Tribes and Other Backward  
Classes for appointment to different posts of teachers and non-teaching officers  
and employees and for the purpose of admission of students in the affiliated  
or conducted colleges. Sub-section (3) thereof further provides that the Uni-  
D versity shall adopt general policy of Government in regard to the welfare of  
various categories of weaker sections of the society and minorities as directed  
by the Government, from time to time. Section 9 (1) provides that without prior  
approval of the Government, University shall not create any new posts of  
E teachers, officers or other employees; revise pay, allowances, post-retirement  
benefits and other benefits of its teachers, officers and other employees, divert  
any earmarked funds received for any purpose other than that for which it was  
received and incur expenditure on any developmental work from the funds  
received from the Government or take any decision regarding affiliated col-  
leges resulting in increased financial liability, direct or indirect, for the Gov-  
F ernment. Sub-section (4) of Section 9 further provides that in case of failure  
of the University to exercise powers or perform duties specified in Section 5  
or where the University has not exercised such powers or performed such  
duties adequately, or where there has been a failure to comply with any order  
issued by government, the Government may, on making such enquiry as it may  
deem fit, issue a directive to the University for proper exercise of such powers  
G or performance of such duties or comply with the order and it shall be the duty  
of the University to comply with such direction. Clause (8) of Section 48 of  
the Act provides that the Statutes of the University may provide qualifications,  
recruitment, workload, code of conduct, terms of office, duties and conditions  
of service, including periodic assessment of teachers, officers and other em-  
H ployees of the University and the affiliated colleges, except those colleges or

institutions maintained by the State or Central Government. Sub-section (6) of Section 49 thereof provides that the Chancellor, either *suo motu* or on the advice of the Government, may, direct the University to make provisions in Statutes in respect of any matter specified by him. Section 74 of the said Act lays down that no management of a college or recognised institution shall be allowed to close down the college or recognised institution without prior permission of the State Government.

We shall now examine Section 64 of the Act for the purpose whether the perspective plan prepared by the University is binding on the State Government when it resolves to set up a government run medical college within the State in light of provisions of the Act stated hereinbefore and other relevant provisions.

The aforesaid noted provisions of the Act show that the State Government exercises considerable control over the running of the affairs of the University and inasmuch as the University is prohibited from framing any statutes laying down the qualifications, recruitment, terms of office and conditions of service of employees and officers of the Government run institutions. We have already held in preceding paragraphs of this judgment that the defined meaning of the expression 'management' cannot be assigned to the expression 'management' occurring in Section 64 of the Act and as and when the State Government decides to set up a government run medical college, it is not required to submit any application to the University for grant of permission by itself. We have also held that under para 3 of the Regulation the State Government is not required to grant Essentiality Certificate to itself and its decision to set up a government run medical college at a proposed location substantially is an Essentiality Certificate to the extent it relates to the proposed location of the medical College. In that view of the matter, the perspective plan prepared by the University under the Act is binding on the State Government qua those who are applicants for grant of permission to open a new medical college under Section 64 of the Act. The State Government being not an applicant for grant of permission under section 64 of the Act, the perspective plan prepared by the University is not binding on it when it takes a decision to establish a new Government medical college. However, the perspective plan prepared by the University may not strictly binding on the State Government when it decides to set up its own medical college, but such a perspective plan serves as a guideline indicating therein the desirability of setting up a medical college by

A the State Government in a particular region or area on account of either its backwardness or lack of medical facilities in that region or area. Such a guideline helps the State Government in finding out locations when it decides to set up a medical college within the State in three ways. Firstly, such a guideline excludes the possibility of an element of arbitrariness in determining the location of the proposed medical college; secondly, it helps the State Government while arriving at a decision of desirability of having a medical college in a particular area or region on account of its backwardness or lack of medical facilities and thirdly, such a guideline would also be in a true spirit of Article 371 (2) (c) of the Constitution if it is held that Article 371 (2) (c) is applicable to the medical education also. The State Government is expected to comply with the perspective plan as far as possible. However, any single deviation from such a guideline by the State Government when it decides to set up its own medical college within the State would not make its decision invalid. In any case, in the present case, we do not find any deviation from the perspective plan prepared by the University. The recommendations of the perspective plan for the year 2000-2001 are thus:

E “...The tribal areas in Khandesh and Western Maharashtra and in Vidarbha need special consideration. Therefore it is suggested that permission to start any new college has to be considered only for Vidarbha and Marathawada. Under any circumstances not more than 1 college for each region (Vidarbha and Marathwada) with an intake capacity of 100 per annum be permitted.”

F It may be stated that the State while maintaining regional imbalances is also required to maintain intra regional imbalances being the welfare State. In the light of the aforesaid recommendations, the State Government in a decision dated 30.8.2000 stated that out of 34 medical colleges in the State, 11 colleges are government colleges and since the year 1989-90, no government medical college was opened. It was further stated therein that in the Western Ghat there are 62 Talukas in hilly area where the residents of said Talukas have to face difficult conditions and the students coming from that area are lower in terms of merit than the other students of the State. It was, therefore, decided to keep 20% seats reserved for residents of said 62 Talukas in the proposed Government Medical College at Kolhapur. The private medical colleges where 50% seats are payment seats, the component of free seats in Government Medical Colleges in rest of Maharashtra area is lowest, which would be clear from the

following table:

Availability of Medical Seats as per population in three  
Development regions of Maharashtra State.

Region	No. of Govt. Colleges	No. of Seats	Population (Yr. 2000)	No. of Seats per 10,000 population
ROM	5	650	5,74,89,865	0.113
Marathawada	3	250	1,56,81,205	0.159
Vidarbha	3	400	1,97,88,331	0.202

While the State Government took decision to establish government run medical college at Kolhapur it took decision to set up one Government run medical college in Vidarbha region and the second government medical college in Marathawada region in conformity with the perspective plan. Shri Maninder Singh, learned counsel representing Medical Council of India stated before us that the medical council shall complete all the formalities within three months and send its report to the Central Government immediately thereafter. Learned Solicitor General stated that as soon as the approval of the Central Government is received the State Government shall immediately would take steps to open Government medical colleges in those regions. In view of the said statements, we do not find that there was any deviation from the perspective plan prepared by the University because both the Vidarbha and Marathawada have been provided for government run medical college - one in each region. We, therefore, find that there was substantial compliance of the perspective plan prepared by the University.

Learned counsel for the respondents strongly relied upon the decision of the Bombay High Court in the case of *Dhananjay R Kulkarni and Ors. v. State of Maharashtra and Ors.*, [1999] 2 Maharashtra Law Journal, 323, wherein it was held that the perspective plan prepared by the University was binding on the State Government. In *Dhananjay's* case (supra), the management of a private institution was applicant for setting up a Bachelor of Computer Science course. The University found that the location of the proposed institution was contrary to the perspective plan and, therefore, did not recommend the same. However, the State Government granted permission. It is in that context, the High Court held that the perspective plan was binding on the State Government

A also, which is not the case here. In the present case, we are concerned with setting up of a government run medical college which is not a private management within the meaning of 'management' occurring in Section 64 of the Act read with para 3 of the Regulation and, therefore, reliance of the decision in *Dhananjay's* case (supra) is totally misplaced.

B

Lastly, it was urged that since in *Dhananjay Kulkarni's* case (supra), no appeal was filed by the State government and in fact the State Government has accepted the said judgment and therefore, this appeal deserves to be dismissed. Learned counsel also relied upon a decision of this Court in *Union of India v. Satish Panalal Shah*, (2001) ITR (249), 221 in support of his argument. We do not find any merit in this submission. We have already held that the decision in *Dhananjay Kulkarni's* case (supra) related to a private management and has nothing to do with the setting up of a new government run medical college and, therefore, the decision in *Dhananjay Kulkarni's* case (supra) has no application in the present case. In that view of the matter acceptance of the judgment in *Kulkarni's* case by the State Government does not affect the maintainability of the present appeals. Further, the reliance of the decision in *Union of India v. Satish Panalal Shah* (supra) is totally misplaced.

C

D

To sum up, what we have held hereinbefore are these :

E

(A) That, the decision of the State Government to establish a government run medical college at a proposed location tantamounts to an Essentiality Certificate under para 3 of the Regulations to the extent of location of the medical college;

F

(B) That, the defined meaning of expression 'management' cannot be assigned to the expression 'management' occurring in Section 64 of the Act;

G

(C) That, the expression 'management' occurring in Section 64 of the Act does not include the State Government;

H

(D) That, when the State Government resolves to set up a medical college at a proposed location, it is not required to submit any application to itself for permission to establish a Government run medical college through the University under Section 64 of the Act;

(E) That, any perspective plan prepared by the University is not strictly binding on the State Government when it resolves to set up a government medical college at a proposed location in view of the fact that the State is not the 'management' under Section 64 of the Act; A

(F) That, the perspective plan prepared by the University binds the State Government qua private management or anybody else excepting the State Government applying for permission of the State Government to open a medical college; B

(G) That, any perspective plan prepared by the University serves as a guideline to the State Government as and when the State Government decides to set up a new government run medical college within the State and the State Government is expected to abide by the said guidelines, as far as possible; C

(H) That, in the present case, there was substantial compliance of the perspective plan prepared by the University; and, D

(I) That, the decision in the present appeal is confined to the question of establishment of a government run medical college in the State.

For the aforesaid reasons, we are of the view that the present appeal deserves to succeed. Consequently, the judgment under appeal is set aside and the appeal is allowed. There shall be no order as to costs. E

N.J.

Appeal allowed.