**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH, NAGPUR**

**WRIT PETITION NO.7590 of 2017**

**Dr. Pradeep Arora**,
Aged 61 years,
S/o sh Brij Kumar,
301, Milestone Parkront,
NB Khare Marg,
Opposite Dhantoli Garden,
Dhantoli, Nagpur,
Maharashtra 440010. ... **Petitioner**

**Versus**

**The State of Maharashtra**,
through its Chief Secretary,
having its office at Mantralaya,
Mumbai. ... **Respondent**

Dr. Pradeep Arora – the Petitioner in person.

Shri Sunil Manohar, Senior Advocate, assisted by Shri Nikhil Gaikwad, Advocate, as *Amicus Curiae*.

Shri Aashutosh Kumbhkoni, Advocate-General, with Shri Akshay Shinde, Advocate, and Smt. S.S. Jachak, Assistant Government Pleader, for Respondent.

**CORAM : R.K. DESHPANDE & VINAY JOSHI, JJ.**

**DATE OF RESERVING THE JUDGMENT : 22-10-2018**

**DATE OF PRONOUNCING THE JUDGMENT : 2-11-2018**

**JUDGMENT (Per : R.K. DESHPANDE, J.) :**

**1.** Rule, made returnable forthwith. Heard finally by consent of parties.

**2.** The petitioner is a medical practitioner as General and Paediatric Surgeon and runs a Nursing Home, viz. Arora Hospital, on the first floor of Shreewardhan Complex, Ramdaspeth, Nagpur. The petitioner claims that the Nursing Home is duly registered under the Maharashtra Medical Council Act, 1965 and the certificate of registration to that effect issued on 21-12-1993 is placed on record.

**3.** The challenge in this petition is to the definition of "establishment" under Section 2(4) of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 ("the new Act"), brought into force with effect from 7-9-2017, to the extent it applies to the profession and the establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others) and

requiring such establishment to comply with the provision of Section 6 in respect of its registration with the Facilitator if the employees engaged are ten or more, and Section 7 regarding intimation of it to be given if the strength of the employees engaged is less than ten. As a result of registration of such establishment with the Facilitator, the provisions of the said Act become applicable and the employer is under statutory obligation to comply with it. The challenge is on the ground that it violates the guarantee of the petitioner contained in Article 19(1)(g) of the Constitution of India to practise profession or to carry on any occupation or business and that it is beyond the competence of the State Legislature.

**4.** Initially, on 4-12-2017, this Court issued notice to the respondent, returnable on 15-1-2018. Separate notice was also directed to be issued to the Office of Advocate-General of the State. The petition was amended on 6-6-2018 and we thought it fit to appoint Shri Sunil Manohar, the learned Senior Advocate as *Amicus Curiae* to be assisted by Shri Nikhil Gaikwad, Advocate. On 13-7-2018, we thought that it would not be necessary for this Court

to go into the question of *vires* of the provisions of the new Act if the State Government is of the opinion that the medical establishment of the petitioner is covered by the exemption provided under Section 3(8) of the new Act.

**5.** On 24-10-2018, we heard the petitioner, appearing in person; also Shri Sunil Manohar, the learned Senior Advocate, appointed as *Amicus Curiae*; and Shri Aashutosh Kumbhkoni, the learned Advocate-General, at length.

**6.** The Maharashtra Shops and Establishments Act, 1948 (referred to as "the old Act) was brought into force with effect from 11-1-1948 and it was to consolidate and amend the law relating to the regulation of conditions of work and employment in shops and commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of amusement or entertainment and other establishments. Section 2(4) of the old Act defined "Commercial establishment" as under :

**Section 2(4) :**

*" "Commercial establishment" means an establishment which carries on, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes a society registered under the Societies Registration Act, 1980, and a charitable or other trust, whether registered or not, which carries on whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment."*

Section 2(8) defined the "establishment" as under :

**Section 2(8) :**

*" "Establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the State Government, may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act."*

Section 7 of the old Act required registration of establishments and upon such registration, such establishments were under obligation to comply with the statutory obligations created by it. Section 5 of the old Act conferred overriding power upon the State Government to declare any establishment or class of establishments to which the Act or any of the provisions therein

shall apply by issuance of notification in the Official Gazette and upon such declaration the establishment covered by the notification was deemed to be an establishment within the meaning of Section 2(8) of the old Act.

**7.** The inclusion of medical establishment in the definition of "Commercial establishment" under the old Act was the subject-matter of challenge in the decision of the Apex Court in the case of *Dr. Devendra M. Surti* v. *State of Gujarat*, reported in *AIR 1969 SC 63*. It was a case where the appellant-doctor was having his dispensary and with the help of a solitary nurse or attendant, the patients were examined. It was the contention that the intention of the Legislature in enacting Section 2(4) was to include only those professions which are carried on in a commercial manner and, therefore, the dispensary of the appellant-doctor does not fall within the definition of "Commercial establishment". The argument was accepted and the appellant-doctor, who was convicted for an offence under Section 52(e) read with Section 62 of the old Act and Rule 23(1) of the Rules therein directing him to suffer simple imprisonment for a week and to pay

a fine of Rs.25 was set aside.

**8.** In the decision of the Division Bench of this Court in the case of *State of Maharashtra v. Dhanlaxmi Meisheri,* reported in *1981 Mh.L.J. 635*, it was a case of a medical practitioner running a nursing home, which had seven persons, consisting of three Nurses, three Ayahas and one Metrani. The entire staff did not work at a time but worked in shifts. The challenge was to the notification issued under Section 5 read with the latter part of Section 2(8) of the old Act, which defined the word "establishment" and included in the said definition the expression "such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of the Act". The notification declared any hospital to be an establishment and the explanation was to define "hospital" mean, *inter alia*, any maternity home. This Court held that the said notification insofar as it seeks to include a maternity home run by the medical practitioner within the Act was beyond the powers conferred by the Act and, therefore, it was held to be invalid. The reliance was placed upon several previous decisions, including the decision in the case of

*Dr. Devendra Surti,* cited supra.

**9.** In another decision of the Division Bench of this Court in the case of *Narendra Keshrichand Fulandi and another* v. *State of Maharashtra*, reported in *1985 Mh.L.J. 1*, it was a case where the establishment of a lawyer, who employed only one Clerk, who did miscellaneous work, like keeping briefs and carrying them to the Court, was covered by the amendment to Section 2(4) of the old Act, the challenge was only to the inclusion of establishment of a legal practitioner in the definition of a "Commercial establishment". While upholding the challenge to it on the ground of violation of Article 14 of the Constitution of India, this Court has held that the definition of "Commercial establishment" as explained by judicial opinion, the establishment of a legal practitioner could not be included in the category of commercial establishment. The Court, therefore, struck down the amendment so far as it related to the establishment of a legal practitioner and it was held that herding of the establishment of a legal practitioner together with the commercial establishment was irrational and arbitrary.

**10.** The enactments similar to the old Act were prevailing in the various States in the country. Such enactments were held to be deficient, inadequate and suffering from shortcomings in providing social security benefits to all the employees covered by it. It was felt necessary to provide even platform for the offline business to compete with the online business and to permit to operate shops and establishments for twenty-four hours and all the days in a week. There was need to bring about uniformity and equity in the provisions of law enforcement, which would also to improve public accountability, transparancy and facilitate the ease of doing business and create more jobs. A tripartite meeting was, therefore, held at the leval of the Central Government to discuss the model Act, in which the participants of the trade unions, employees' organisations and the State Governments shared their views. The model legislation was put on the Internet and also through other means in the public domain. It was approved by the Central Cabinet for circulation among the State Governments to modify the existing enactment on this pattern.

**11.** The State Government approved the model legislation with suitable modifications and it was presented before both the Houses of the State Assembly and was approved as the **Maharashtra Shops and Establishments Act, 2017**. It received the assent of the Governor of the State on 7-9-2017 and on the same day, it was published in the Official Gazette, bringing it in force and repealing the old Act. The object of the new Act is to provide for the regulation of the conditions of employment and other conditions of service of workers employed in the shops, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments and for the matters connected therewith or incidental thereto. Sub-Section (3) of Section 1 of the new Act states that the provisions of this Act except Section 7 shall apply to the establishments employing ten or more workers and the provisions of Section 7 shall apply to the establishments employing less than ten workers.

**12.** Section 2(4) of the new Act defines the term "establishment", and it runs as under :

**Section 2(4) :**

*" "establishment" means an establishment which carries on, any business, trade, manufacture or any journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or produce exchange or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession or manufacture; and includes establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others), architect, engineer, accountant, tax consultant or any other technical or professional consultant; and also includes a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto; and includes shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 does not apply; and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act."*

The aforesaid definition to the extent it includes the profession and the establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others) and requires such establishment having ten or more employees to get itself registered, as provided under Section 6 of the new Act, with the Facilitator and to provide an

intimation to the Facilitator if the strength of employees is less than ten, is the subject-matter of challenge in this petition.

**13.** Section 4(1) of the new Act confers an overriding power upon the State Government to declare by notification in the Official Gazette any establishment or class of establishments to which this Act or any of the provisions thereof does not for the time being apply, to be an establishment or class of establishment to which this Act or any provisions thereof with such modifications of adaptations as may be in the opinion of the State Government be necessary shall apply from such date as may be specified in the notification. Sub-section (2) therein states that on such declaration under sub-section (1), any such establishment or class of establishments shall be deemed to be an establishment or class of establishments to which this Act, applies and all or any of the provisions of this Act with such modifications or adaptations as may be specified in such declaration, shall apply to such establishment or class of establishments or to such worker or persons or class of workers or persons.

**14.** Section 6 under Chapter II of registration of establishments compulsorily requires the employer of every establishment employing ten or more workers to submit an application online in a prescribed form for registration to the Facilitator of the local area concerned, together with such fees and such self-declaration and self-certified documents as may be prescribed and contained in Items (a) to (e) under sub-section (1) therein and obtain a registration certificate from the Facilitator appointed under Section 28.

**15.** Section 7 of the new Act deals with the intimation of new establishment employing less than ten workers. Sub-section (1) therein requires every establishment employing less than ten workers to give an intimation of having commenced the business to the Facilitator within a period of sixty days from the date of commencement of the Act or the date on which the establishment commences its business in the prescribed form, together with such self-declaration and self-certified documents as may be prescribed, containing the details, such as the name of the employer and the manager, name of the establishment, nature of business, number of

workers, and such other details as may be prescribed. The proviso below sub-section (1) requires obtaining of registration as per the provision of Section 6, if at any point of time, the number of workers engaged in the establishment becomes ten or more so that the provisions of the Act shall become applicable to such establishment.

**16.** Section 11 deals with the opening and closing hours of establishment. Section 12 deals with daily and weekly hours of work in establishment and interval for rest. Section 13 deals with prohibition of discrimination against woman workers, and sub-section (1) therein states that no woman workers shall be discriminated in the matter of recruitment, training, transfers or promotion or wages. Though under sub-section (2) therein no woman workers shall be required or allowed to work in any establishment except between the hours of 7 a.m. and 9-30 p.m., the proviso therein states that the woman worker with her consent, shall be allowed to work during the said period also, subject to adequate protection of her dignity, honour and safety, protection from sexual harassment and her transportation from the

establishment to the doorstep of her residence as may be prescribed, are provided by the employer or his authorised representaive or manager or supervisor.

**17.** Section 14 of the new Act deals with spread-over of a worker in the establishments, which shall not exceed ten and half hours in any day, and in case of a worker entrusted with intermittent nature of work or urgent work, the spread-over shall not exceed twelve hours. Section 15 makes the provision for overtime wages beyond nine yours a day for forty-eight hours a week at the rate of twice his ordinary rate of wages, which shall not exceed one hundred and twenty-five hours in a period of three months. Section 16 permits the employer to keep an establishment open for business on all days in a week subject to the condition that every worker shall be allowed weekly holiday of at least twenty-four consecutive hours of rest. Section 17 requires employer to furnish identity card to worker.

**18.** Chapter IV deals with leave with pay and payment of wages. Every worker shall be allowed a weekly holiday with wages

in terms of Section 18 , and every worker shall be paid for a period of his leave earned, as provided, at a rate equivalent to the daily average of his wages for the days on which he actually worked during the preceding three months, exclusive of any earnings in respect of overtime. Chapter V contains welfare provisions, and Section 19 requires every employer to take such measures relating to the health and safety of the workers including cleanliness, lighting, ventilation and prevention of fire as may be prescribed. Sections 20 to 25 require every employer to provide the facilities of first-aid, drinking water at suitable points with the provision of sufficient latrine and urinal for men and women, creche, canteen, etc., and to maintain the records. Chapter VI deals with the enforcement and inspection, Chapter VII deals with the offences and penalties, if it is ultimately found that there is violation of the statutory provisions.

**19.** The statutory obligations contained in the aforesaid provisions upon the employer commence upon the registration of the establishment with the Facilitator and consequently all the provisions of the said Act become applicable and failure to perform

any statutory obligation results in imposition of penalty and registration of offences, as provided under Chapter VII of the offences and penalties under the new Act. Significantly, the provisions of Sections 8, 9, 10 and 11 of the new Act are not applicable to the establishments employing less than ten workers. There are no obligations under the new Act for the establishment of less than ten employees, except to provide intimation as contained in Section 7 of it. Hence, the question of imposing fine or penalty upon such establishments does not arise.

**20.** Dr. Pradeep Arora, the petitioner, appearing in person, has urged that by virtue of the decision of the Apex Court in the case of *Dr. Devendra Surti*, and of this Court in the cases of *Dhanlaxmi Meisheri* and *Narendra Fuladi*, cited supra, which are followed subsequently by various Division Benches of this Court, the inclusion of the profession and the establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others) in the definition of "establishment" under Section 2(4) of the new Act and creating various statutory obligations upon it by virtue of the provisions of

Sections 6 and 7 of the new Act is liable to be struck down. He has also urged that the said provisions violate the guarantee of the petitioner contained in Article 19(1)(g) of the Constitution of India to practise profession or occupation of a doctor. It is also his argument that the provisions are beyond the legislative competence and in deviation of the model Act or the suggested legislation. He has also urged that for absence of pre-legislative consultation, the provisions are liable to be struck down.

**21.** In the decision of the Apex Court in the case of *Dr. Devendra Surti*, cited supra, the principle of *noscitur a sociis* was invoked while interpreting the provision of Section 2(4) of the old Act defining "Commercial establishment" and it was held that even a consulting room where a doctor examines his patients with the help of a solitary nurse or attendant, would be covered. However, it is further held that certain essential features or attributes are invariably associated with the words "business and trade", as understood in the popular and conventional sense and it is the colour of these attributes which is taken by the other words used in the definition of Section 2(4) of the Act, though their normal

import may be much wider. It is on this reasoning, it was held that the professional establishment of a doctor cannot come within the definition under Section 2(4) of the Act, unless the activity carried on was also commercial in character.

**22.** The Apex Court, in *Dr. Devendra Surti's* case, has made a clear distinction between a professional activity and an activity of a commercial character. It is held that a professional activity must be an activity carried on by an individual by his personal skill and ingelligence, and unless the profession carried on also partakes of the character of commercial nature, it would not fall within the definition under Section 2(4) of the Act. After a detailed discussion, it is held that the presence of the profit motive or the investment of capital tradition associated to the notion of trade and commerce cannot be given an undue importance in construing the definition of "Commercial establishment" under Section 2(4) of the Act It is held that the correct test of finding whether a professional activity falls within Section 2(4) of the Act is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material services to the

community or any part of the community with the help of employees in the manner of a trade or business in such an undertaking.

**23.** The Apex Court has in the aforesaid decision also referred to the observations in its earlier decision in the case of *The National Union of Commercial Employees* v. *M.R. Meher, Industrial Tribunal, Bombay*, reported in *1962 Supp (3) SCR 157*. While dealing with the question as to whether work of solicitors is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, we also reproduced here the said portion as under :

> *" When in the Hospital case, [(1960) 2 SCR 866] this Court referred to the organisation of the undertaking involving the cooperation of capital and labour or the employer and his employees, it obviously meant the cooperation essential and necessary for the purpose of rendering material service or for the purpose of production. It would be realised that the concept of industry postulates partnership between capital and labour or between the employer and his employees. It is under this partnership that the employer contributes his capital and the employees their labour and the joint contribution of capital and labour*

*leads directly to the production which the industry has in view. In other words, the cooperation between capital and labour or between the employer and his employees which is treated as a working test in determining whether any activity amounts to an industry, is the cooperation which is directly involved in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour cooperate or employer and employees assist each other is an industry. The distinguishing feature of an industry is that for the production of goods or for the rendering of service, cooperation between capital and labour or between the employer and his employees must be direct and must be essential."*

Applying the aforesaid law laid down, the Apex Court has held in *Dr. Devendra Surti's* case that the manner in which the activity in question is organized or arranged, the condition of cooperation between the employer and the employees being necessary for its success and its object being to render material service to the community can be regarded as some of the features which render the carrying on of a professional activity to fall within the ambit of Section 2(4) of the Act.

**24.** In the decision of the Division Bench of Court in *Dhanlaxmi Meisheri's* case, cited supra, the challenge was to the notification issued under Section 5 of the old Act, declaring the hospital to be an establishment, and by explanation, the hospital was defined to mean any maternity home. The Court has held that the provisions of Section 5 of the old Act have to be read in the light of sub-section (8) of Section 2, which includes in the definition of "establishment" such other establishments as may be notified. The Court has held that the normal meaning of the word "such" is similar to what precedes. The Court, therefore, held that the power of the State Government to issue notification is confined to something which is similar to or analogus to what precedes the word "such", invoking the rule of *ejusdem generis*. It means similar to shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment.

**25.** In the decision of the Division Bench of this Court in *Narendra Fuladi's* case, this Court has held that there are no common properties or characteristics to be found in the other

commercial establishments and the establishment of a legal practitioner which have been herded together. The Court has held that the differentia must be intelligible and must be reasonably related to the object of the law. It was held that there was no rational basis for herding them together, which is done either arbitrarily or irrationally. The Court, therefore, struck down the amendment to Section 2(4) of the old Act, which sought to enlarge the definition to include the establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any technical or professional consultant within the definition of "Commercial establishment".

**26.** In all the aforesaid cases relied upon by the petitioner, the Court was dealing with the establishment of a medical practitioner or a lawyer where the strength of the employees did not exceed seven. The problem of including the medical or lawyers establishment arose in the definition of "Commercial establishment" under the old Act, on three counts - **(i)** the word "profession" was preceded and associated by the words "business, trade" and, therefore, its meaning was restricted to the attributes of

business, trade from which it took colour, **(ii)** the establishment of medical practitioner was not specifically and independently included in it, and **(iii)** there were no common properties or characteristics found between commercial establishment and the establishment of medical or legal practitioner. In such context, the Court considered the question as to whether such establishment assumed the character of "Commercial establishment", as defined under Section 2(4) of the old Act. The old Act was modelled on the definition of "commercial" nature of establishment and the number of employees engaged in the establishment was of no relevance.

**27.** The word "Commercial", which was suffixed to an establishment under the old Act, does not find place in the new Act. The word "profession" or the words "an establishment of medical practitioner" in the definition of "establishment" in Section 2(4) of the new Act are not preceded or associated by the words "business, trade" so as to take such colour, as was there under the old Act. Now there is herding of the establishments having common properties and characteristics in contra-distinction

with the position in the old Act. The definition of "establishment" under the new Act is modelled on the definition of "Industry" under Section 2(j) of the Industrial Disputes Act, 1947, meaning thereby any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. Thus, there is a drastic change in the complexion after bringing into force of the new Act, and the grounds on which the Apex Court or this Court construed the various provisions under the old Act no longer survive to challenge the provision of Section 2(4) contained in the new Act, defining establishment only.

**28.** In our view, the provisions of the new Act are designed after careful consideration of certain observations made by the Apex Court and this Court in the aforesaid decisions. While formulating the definition of "establishment" under Section 2(4) of the new Act, care is taken to separately include the establishment of medical practitioner, including hospital, dispensary, clinic, polyclinic, maternity home and such others. The criteria of ten or more employees for applicability of the Act under sub-section (3) of

Section 1 of the new Act, is designed to bring only such establishments, which partake the character of an industrial establishment. It would not be a matter of exaggeration on our part if we call this provision as the backbone of the new Act. The legislation has taken care to maintain the distance between the activity carried on by an individual by his personal skill and intelligence and those carried on or organised by cooperation between the employer and the employee in rendering material services to the Society. We find this to be in conformity with what is expressed in relation to commercial establishment by the Apex Court in *Dr. Devendra Surti's* case.

**29.** Shri Aashutosh Kumbhkoni, the learned Advocate-General, invited our attention to the affidavit of the State Government, where the stand is taken that the activity covered has now to satisfy three tests - **(i)** there should be systematic activity, **(ii)** organized by cooperation between employer and employee, and **(iii)** for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. In our view, it is the harmonious activity carried out in cooperation amongst all the partners in the

establishment to render material services to the community with the help of capital, which is covered by the definition of "establishment" under Section 2(4) of the new Act. Whether the establishment is running in profit or loss is of no consequence. We find that Shri Kumbhkoni is right in urging that it is a matter of legislative policy and wisdom as to the types of establishments to be included in the definitation.

**30.** Now coming to the question of competency of the State Legislature to bring into force the new Act, Article 246 of the Constitution of India deals with the fountain-head of the powers of Parliament as well as of the State Legislature. In terms of Clause (2) therein, the Parliament and the State Legislature of any State have power to make laws in respect to any of the matters enumerated in List III in the Seventh Schedule of the Constitution of India. Entries 24 and 26 under the Concurrent List are reproduced below :

"**List III – Concurrent List**

**Entry 24** : *Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.*

**Entry 26** : *Legal, medical and other professions*."

The legislation in question is referable to the subject of the "Welfare of labour, including the conditions of work", contained in Entry No.24, reproduced above. Entry No.26 deals with the legal, medical and other professions. We have, therefore, no hesitation to accept the argument of Shri Ashutosh Kumbhkoni, the learned Advocate-General, and Shri Sunil Manohar, the learned Senior Advocate, appointed as *Amicus Curiae*, that the legislation in question does not suffer from the *vires* of incompetence. The objects and reasons of the new Act, reproduced earlier, not only take into consideration the regulation of conditions of employment, but also provide social security benefits to the employees covered by it. It deals with the statutory liabilities of employer of medical establishment. The new Act is modelled on the legislation suggested by the Central Government to bring about uniformity and equity in the provisions of law enforcement, to improve public accountability, transparancy and to facilitate the ease of doing business and create new jobs. The new Act is, therefore, in pith and substance, the legislation covered by Entries 24 and 26 in the

Concurrent List and the State Legislature has complete antonomy and prerogative to make law on these subjects in the absence of any enactment by the Parliament on the same subjects.

**31.** We may usefully refer to the observations made by the Division Bench of this Court in *Narendra Fuladi's* case, cited supra. In Para 14 of the said decision, the Court has held that though the establishment of a legal practitioner could not be included as such, this is not to say that the Legislature was not competent to make a law in respect of legal, medical and other professions, as comprised in Entry No.26 of List III of the Seventh Schedule of the Constitution of India, consistently with the nature of legal profession and the functions which it had to perform and the special characteristics of its activity. In Para 19, the Court specifically holds that the legislation cannot be assailed on the ground of lack of legislative competence, as such a law could be made by the State Legislature on the subject in view of Entry No.26 of List III of the Seventh Schedule. This Court, therefore, rejected the argument of lack of competence on the part of the State Legislature to bring into force the new Act.

**32.** The argument that it is a case of discrimination as the profession or establishment of a lawyer, chartered accountant, etc., falling in the same class is excluded from the applicability of the new Act, also does not impress us. Firstly, it is the legislative policy and wisdom as to which profession or establishment is to be included for applicability of the new Act. Secondly, the establishment of a medical practitioner falling in a class similar to a legal practitioner or a chartered accountant engaging less than ten employees, is excluded from the applicability of the Act. Thirdly, the Legislature seems to have adopted a practical approach based upon the data available with it indicating that the concept of medical tourism has also increased the commercial aspect of medical establishments. There are large multi-speciality hospitals, chains of hospitals spreading across inter-district, inter-state resulting in huge employment and engagement of huge work-force in the sector. It, therefore, became necessary to safeguard the interest of the employees and regulate their employment, conditions of service and provide them social security from being exploited under the garb of urgent work. This is the stand taken on

affidavit by the respondent. We, therefore, do not find any substance in the challenge based upon Article 14 of the Constitution of India.

**33.** Article 19 of the Constitution of India deals with the protection of certain rights regarding freedom of speech, etc., and clause (1)(g) therein states that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business. This, however, does not prevent the State from making any law imposing, in the interests of general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause in terms of clause (6) therein. There is always a presumption in respect of constitutionality of an enactment or any provision contained therein and the burden lies upon the person who claims the violation of his fundamental right to make out a case and satisfy the Court in respect of such challenge.

**34.** After going through the averments made in the petition and hearing the petitioner in person, we fail to understand as to how and in what manner the fundamental right of the petitioner to

practise medical profession has been taken away by any of the provisions contained in the new Act. There is total absence of material averments making out a case in respect of it. On the contrary, we find that the provisions contained in Chapters III, IV and V of the new Act are directed to achieve the object of providing for regulation of conditions of employment and conferring of social security benefits, in the interests of general public, as provided in Clause (6), which can control the fundamental right under Section 19(1)(g) of the Constitution of India. We, therefore, do not find any substance in the challenge based upon the violation of fundamental right to practise medical profession.

**35.** Now coming to the grievance of the petitioner in respect of the provision of Section 7 of the new Act providing intimation to the Facilitator in respect of estblishment of a medical practitioner having less than ten employees, we find that the essential object of this provision is to collect the relevant data and compile the statistical information to formulate the policy of the State Government contained in Article 39 in Part IV of the directive principles of State policy towards securing - **(i)** that the citizens,

men and women equally, have the right to an adequate means of livelihood, **(ii)** that there is equal pay for equal work for both men and women, **(iii)** that the health and strength of workers, men and women, and **(iv)** that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 42 requires the State to make the provision for securing just and humane conditions of work and maternity relief. Article 43 requires the State to make endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Obviously, such provision, in the form of Section 7, incorporated for collection of data to formulate the further policy, cannot be assailed on any legitimate ground.

**36**. It is urged that in terms of Section 3(8) of the new Act, the provisions contained therein do not apply to the establishments used for treatment or care of infirm, destitute or mentally unfit. It is urged that the petitioner runs a Nursing Home, duly registered under the Maharashtra Medical Council Act, 1965. The reference is

made to the provisions of the Maharashtra Nursing Home Registration Act, 1949 ("the Nursing Home Act"), which defines under Section 2(4) the "nursing home" to mean any premises used or intended to be used, for reception of persons suffering from any sickness, injury or infirmity and providing of treatment and nursing for them, and includes a maternity home, and the expression "to carry a nursing home" means to receive persons in a nursing home for any of the aforesaid purposes and to provide treatment or nursing for them. It is urged that the establishment of the petitioner would, therefore, be exempted from the applicability of the new Act.

**37.** The stand of the respondent-State Government in response to the aforesaid contention is that the said provisions cover those establishments which treat or care exclusively for the infirm, destitute or mentally unfit, which are *pro bono*. The word "treatment" does not necessarily mean medical treatment, and the word "infirm" is an adjective and conveys a permanent instability, whereas the word "infirm" is used in the Nursing Home Act and conveys a non-permanent instability. It is also the stand taken that

the new Act deliberately excluded the word "sick" used in the Model Act with an intention to exempt only such establishments which exclusively treat and care only for infirm, destitute or mentally unfit.

**38.** We would not deal with the challenge or the claim for exemption under Section 3(8) in the present petition. It would be open for the petitioner to apply for such exemption or make such a claim by producing the relevant material, which can be taken into consideration by the competent authorities under the Act to exclude the establishment of the petitioner, if possible, from the applicability of the new Act upon such satisfaction.

**39.** Lastly, in respect of pre-legislative consultation, we would note only the fact that the Model Act/suggestive enactment formulated by the Central Government was designed upon pre-legislative consultation so as to bring about uniformity and equity in the provisions of law enforcement and it was approved by the Central Cabinet for circulation among the State Governments to modify the existing enactments on this pattern. We, therefore,

hold that merely because the new Act makes certain modifications, alterations or additions in the Model Act, such provisions cannot be struck down, particularly when the basic structure of the Model Act/suggestive enactment is not changed. The State Legislature has complete autonomy and prerogative to legislate on the subject covered by the new Act.

**40.** Before parting with the judgment, we would like to express our gratitude for the able assistance provided by Shri Sunil Manohar, the learned Senior Advocate, appointed as Amicus Curiae, in throwing light upon the position of law, which we could understand on the basis of various decisions cited by him.

**41.** In the result, we uphold the constitutional validity of the provisions of Section 2(4) defining "establishment", which takes within its sweep the establishment of medical practitioner as defined, having ten or more employees for applicability of the Maharashtra Shops and Establishments Act, 2017, Section 4 therein, which empowers the State Government to declare any establishment or class of establishments to which the provisions of

the new Act would be applicable by issuing notifiction in the Official Gazette; and Sections 6 and 7 therein to the extent they require registration of establishment where the strength of employees engaged is ten or more, and provide an intimation of the establishment to the Facilitator where the strength of employees engged is less than ten.

**42.** The petition is, therefore, dismissed. Rule stands discharged. No order as to costs.

**(Vinay Joshi, J.)** **(R.K. Deshpande, J.)**

PD Lanjewar, PS