

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF APRIL, 2026



PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 312 OF 2020 (EDN-RES)

BETWEEN:

1. EMPLOYEES STATE INSURANCE CORPORATION
MEDICAL DIVISION-IV
HEAD QUARTERS OFFICE
PANCHADEEP BHAVAN
C.I.G. MARG, NEW DELHI-110 002
REPRESENTED BY ITS DIRECTOR GENERAL
2. EMPLOYEES STATE INSURANCE CORPORATION
MEDICAL COLLEGE AND PGIMSR, BANGALORE
RAJAJINAGAR, BANGALORE
REPRESENTED BY ITS DEAN
RAJAJINAGAR, BANGALORE - 560 010

...APPELLANTS

(BY SMT. GEETHA DEVI M.P., ADVOCATE)

AND:

1. SRI ABHISHEK CHOUDHARI
AGED ABOUT 26 YEARS
SON OF SRI PULAKESHI CHOUDHARI
RESIDING AT 155, VIJAYA NIVAS
OPPOSITE TO NUCLEUS PRESS
SHIKHARKHANE ROAD
BIJAPUR - 586 104
2. SRI SACHIN M KHEMKAR
AGED ABOUT 25 YEARS



SON OF SRI MOHANA. M
RESIDING AT NO 164, 2ND CROSS
V. P. ROAD, MADIVALA
BENGALURU - 560 068

3. SRI SAQLAIN MOHAMED
AGED ABOUT 26 YEARS
SON OF SRI RAHMATHULLA
RESIDING AT NO. 2647
4TH CROSS, CLOCK TOWER
DARGAH SHAHI MOHALLA
KOLAR - 563 101
4. SRI CHANDRA KEERTHY D.M.
AGED ABOUT 26 YEARS
SON OF SRI DHANANJAYA. N.M
RESIDING AT SRI. VENKATESHWARA NILAYA
GOKULNAGAR, VIRUPAKSHI ROAD
MULBAGAL - 563 131
5. SRI CHANDAN KUMAR L T
AGED ABOUT 25 YEARS
SON OF SRI TEEKESHAPPA
RESIDING AT MAHALASA NILAYA
ASHOKA ROAD, SAGAR - 577 401
6. SRI MEGHANA RAO C
AGED ABOUT 25 YEARS
DAUGHTER OF SRI SADANANDA RAO C
RESIDING AT NO 481
3RD FLOOR, 7TH CROSS
7TH BLOCK (WEST), JAYANAGAR
BENGALURU - 560 070
7. STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND FAMILY WELFARE
OFFICE AT No.105, 1ST FLOOR
SECRETARIAT BUILDING, VIKASA SOUDHA
SESHADRI ROAD, BENGALURU - 560 001
REPRESENTED BY ITS SECRETARY

8. KARNATAKA EXAMINATION AUTHORITY
SAMPIGE ROAD, 18TH CROSS
MALLESHWARAM, BENGALURU - 560 012
REPRESENTED BY ITS
EXECUTIVE DIRECTOR
9. KARNATAKA MEDICAL COUNCIL
NO 70, 2ND FLOOR
VAIDYA KEEYA BHAVANA
K R ROAD H B SAMAJA ROAD CORNER
BASAVANAGUDI
BENGALURU - 560 004
10. RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES
4TH T BLOCK, JAYANAGAR
BENGALURU - 560 041
REPRESENTED BY ITS REGISTRAR
11. MEDICAL COUNCIL OF INDIA
POCKET-14, SECTOR 8, DWARKA
PHASE-1, NEW DELHI - 110 077
REPRESENTED BY ITS SECRETARY

...RESPONDENTS

(BY SMT.AKKAMAHADEVI HIEMATH, ADVOCATE FOR R1, R5 & R6,
SRI K.S. HARISH, GOVERNMENT ADVOCATE FOR R-7,
SRI N.K. RAMESH, ADVOCATE FOR R-8 & R-10
- COPY SERVED V/O 13.10.2020
SMT. RATNA SHIVAYOGIMATT, ADVOCATE FOR R-9
- COPY SERVED V/O 13.10.2020
SRI N. KHETTY, ADVOCATE FOR R-11
- COPY SERVED V/O 13.10.2020 AND
APPEAL DISMISSED AGAINST R2 TO R4 V/O 29.06.2021)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH
COURT ACT PRAYING TO SET ASIDE THE ORDER DATED
14/02/2020 OF THE LEARNED SINGLE JUDGE IN W.P. NOS.30406-
411/2018 ON THE FILE OF THIS HON'BLE COURT AND DISMISS THE
WRIT PETITION WITH COSTS.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

INTRODUCTION

1. This *intra*-court appeal arises from a common judgment and order dated 14.02.2020 [hereinafter '**the impugned order**'] passed by the learned Single Judge of this Court in W.P.Nos.29365-29368/2018 clubbed with W.P.Nos.29817-29818/2018 & 29820-29822/2018, W.P.Nos.29823-29828/2018, W.P.No.29874/2018 & W.P.Nos.29876-29879/2018, and W.P.Nos.30406-30411/2018 (EDN-RES), whereby the learned Single Judge allowed the said writ petitions. The learned Single Judge allowed the writ petitions and quashed the impugned posting orders. Further, the court restrained the Employees' State Insurance Corporation [hereinafter '**ESIC**' or '**the Corporation**'] and its colleges from enforcing the five-year compulsory service bond furnished by the writ petitioners

and directed ESIC and its colleges to unconditionally relieve the petitioners from the obligation of compulsory service.

2. The present appeal, W.A.No.312/2020, is preferred by the ESIC and its Medical College & PGIMSR, Rajajinagar, Bangalore [hereinafter collectively referred to as **'the appellants'**] assailing the impugned order insofar as it relates to W.P.Nos.30406-30411/2018. The said petitions were filed by respondents Nos. 1 to 6 herein [hereinafter **'the respondents'** or **'the petitioners'**].

3. The petitioners are students who were admitted to the MBBS course at the ESIC Medical College & PGIMSR, Rajajinagar, Bengaluru [hereinafter **'the College'**] for the academic year 2012-13, in the Government quota seats allotted by the Karnataka Examinations Authority [hereinafter **'KEA'**]. They had furnished service bonds undertaking to serve at the Hospitals of ESIC for a period of five years after completion of their course. The dispute essentially concerns the legality and enforceability of the service bond [hereinafter, **the service bond or bonds**] furnished by the petitioners. In terms of the bonds furnished by the petitioners, they are required to serve five years at any of the ESIC hospitals across the country and on failure to do so, are liable to pay an amount ₹7,50,000/-.

4. It is important to note that the terms of the service bond were subsequently relaxed under the Memorandum dated 28.07.2020 issued by ESIC; the duration of the compulsory service was reduced to one year, and the amount payable on avoiding the bond was reduced to ₹5,00,000/-. The said terms were applicable prospectively, that is, with effect from 28.07.2020. But the benefit was also available to students already serving at the ESIC Hospitals under the bonds furnished by them. Thus, if the remaining period of service under the service bonds furnished by them was greater than a period of one year, the same was limited to that period.

5. The aforesaid memorandum relaxing the conditions of the service bonds was issued after the impugned order was pronounced. Thus, the petitioners' challenge to the legality of a service bond is required to be tested on the basis of the terms and conditions as relaxed by the memorandum dated 28.07.2020.

6. The petitioners challenged the legality of the service bonds on several fronts. First, they contended that ESIC is not competent to prescribe any condition for personal service as it is beyond the powers conferred under the Employees' State Insurance Act, 1948 [hereinafter '**the ESI Act**']. Second, the College does not have any

power to enter into a contract providing for a service bond. Third, that the requirement of rendering compulsory services offends the right to carry on a profession guaranteed under Article 19(1)(g) of the Constitution of India. Fourth, it violates the provisions of Article 23 of the Constitution of India, as it amounts to Bonded Labour. Fifth, that the service bond is void under Section 27 of the Indian Contract Act 1872. And sixth, the petitioners were compelled to execute the service bond, and the same, being without free consent, is void. They claim that the condition for executing the service bond was not made known to them prior to their opting for admission to the college. Additionally, the petitioners claim that, since they were admitted against seats released to the State Government and had already executed bonds to serve the State, no additional condition could be imposed on them.

7. The appellants contest the said contentions. They claim that the ESIC/College has the necessary powers to enter into contracts. The service bond was intended to ensure the provision of medical services to ESIC subscribers and thus fell within the scope of the ESIC's powers and functions. The appellants further claim that the service bond is a contract voluntarily entered into by the parties and that they are thus bound by it. The appellants also question the

petitioners' conduct in raising a challenge after they had completed the course.

PREFATORY FACTS

8. ESIC had established the College and commenced the post-graduate courses for the academic year 2010-11. The College is affiliated to Rajiv Gandhi University of Health Sciences [hereafter, '**RGUHS**']. The College also obtained permission from the Medical Council of India [hereinafter, '**MCI**'] to commence the MBBS course with an intake of 100 (one hundred) students.

9. By a Memorandum dated 09.03.2010 bearing No.L-11/12/3/07/M.E (Fee Struc), the Deputy Medical Commissioner (ME), ESIC Headquarters, New Delhi, circulated the fee structure for the Under Graduate and Post Graduate courses in the proposed ESIC medical institutions. The said Memorandum set out, *inter alia*, the following fee structure for the MBBS/BDS course:

- (i) Tuition Fee: Rs.24,000/- (Rupees Twenty Four Thousand only) per year;
- (ii) University Charges: As per actuals per year;
- (iii) College Security (Refundable): Rs.5,000/- (Rupees Five Thousand only) per annum i.e., chargeable annually

10. It is material to note that the aforesaid Memorandum also stipulated the following conditions:

“(1) A bond to serve the scheme at least for a period of 5 years will be executed by each student at the time of admission. The cost of the entire course will be recovered if one ceases to be in corporation service before completion of Bond period. The format of agreement to be executed will be circulated in due course.

(2) If a candidate is admitted beyond requirement of the scheme a separate fee structure will be applicable/determined keeping in view the total cost involved for the medical education. This is to ensure that medical education on the same lines as in Govt. Medical Colleges is available only to those who shall serve the scheme on completion of their studies. Separate fee structure for this purpose will be advised on a later date.”

11. ESIC issued a prospectus for the MBBS course for the academic year 2012-13. The said prospectus (a copy of which is annexed as Annexure R-4 to the statement of objections) contains *inter alia* the admission policy, the fee structure, and the bond conditions. Section VII of the prospectus set out the bond proforma for UG students. There is some controversy over whether the prospectus was communicated as claimed by ESIC/College. The same is addressed later.

12. For the academic year 2012-13, the College surrendered 15% of its seats to the All India Quota under the Central

Government, and the remaining 85% seats to the State Government of Karnataka. The seats surrendered to the State Government were to be filled under the State quota through the Common Entrance Test (CET) conducted by KEA. It is not in dispute that the petitioners in W.P.Nos.30406-30411/2018 were admitted through the State quota.

13. The KEA conducted the Common Entrance Test for the year 2012 (CET-2012) for admission to Medical, Dental and other professional courses. The order of merit in the CET in which the petitioners were placed qualified them for the online counselling process introduced by the Government for the first time in the said year. The KEA issued a brochure containing details of the CET-2012 and the seat allotment procedure. The CET brochure did not contain any reference to executing the service bond (a five-year compulsory service bond) for admissions to the College.

14. By a notification dated 23.06.2012 bearing No.ED/KEA/Legal Cell/CR-66/2011-12, KEA notified the schedule for the online option entry by eligible candidates from 12.07.2012 to 18.07.2012 (subsequently extended to 23.07.2012). The Real Allotment was announced on 25.07.2012, and the candidates who opted for Choice-1 were required to collect the Admission Order from

26.07.2012 to 30.07.2012 and report to the allotted college by 31.07.2012.

15. By a further notification dated 23.07.2012, the KEA notified the Admission Round Seat Allotment and instructions to candidates. The said notification, *inter alia*, required all candidates who had been allotted Medical Seats through KEA to compulsorily submit a sworn affidavit on ₹100/- e-stamp paper as per the format posted on the KEA website while collecting the admission order. It is relevant to note that the said notification also stated that the last date for reporting to the allotted college was 31.07.2012.

16. The petitioners, having weighed their options, selected the College (College Code: M066ME) in the online counselling held on 27.07.2012. The petitioners were thereafter issued allotment orders by KEA. Upon issuance of the allotment orders, the petitioners paid the prescribed fees and executed bonds for one year's compulsory rural service in favour of the State Government of Karnataka, in terms of Rule 11 of the Karnataka Selection of Candidates for Admission to Government Seats in Professional Educational Institutions Rules, 2006, as amended by the Government Notification No.HFW 79 RGU 2011 dated 17.07.2012. The said bond required the petitioners, on completion of the MBBS course,

to serve in any Primary Health Centre or Primary Health Unit situated in rural areas in the State of Karnataka for a minimum period of one year, failing which they would be liable to pay a penalty of Rupees Ten Lakhs to the Government of Karnataka.

17. Upon execution of the said bonds in favour of the State Government, KEA issued Admission Orders to the petitioners between 26th and 30th July 2012, directing them to report to the College for admission.

18. In terms of the prospectus issued by the College, the petitioners were called upon to execute the service bond for five years of compulsory service. In terms of the bond, the petitioners were required to commit to serving in ESIC hospitals anywhere in India for a period of five years after the completion of the MBBS course, failing which they would pay a sum of ₹7,50,000/- (Rupees Seven Lakh Fifty Thousand only) together with 15% interest.

19. Petitioner No.1, Mr.Abhishek Choudhari, claims that he addressed a letter dated 30.07.2012 to the Executive Director, KEA, Bengaluru, requesting for a change of college on account of the requirement of executing the service bond. His father is also stated to have addressed a letter dated 30.07.2012 to the Dean of

the College, complaining that there was no specific condition for furnishing a bond posted on the website of CET or the College. Therefore, his son, petitioner No.1 ought to be exonerated to furnish such a bond.

20. Whilst the said letters have been placed on record, the learned counsel appearing for the ESIC submits that there is a dispute as to whether they were sent at the material time. ESIC is not in a position to confirm whether any such letters were received. However, it is material to note that there were no further communications sent by petitioner No.1 to pursue his request for a change of college or for exemption from complying with the service bond. The petitioners took no steps to challenge the same at the material time.

21. The petitioners completed their 4.5-year MBBS course and a 1-year compulsory internship at the teaching hospital by approximately January 2018. Thereafter, the petitioners were required to register with the Karnataka Medical Council [hereinafter '**KMC**'] for which the College was required to issue the Certificate of Internship, Study Certificate, and Conduct Certificate. The petitioners approached the Dean of the College requesting the issuance of the said certificates. However, the College refused to

issue the certificates and directed the petitioners to serve in ESIC hospitals as per the service bond.

22. On 22.05.2018, the petitioners, along with other similarly situated students, submitted a joint representation to the Dean of the College, requesting the issuance of their original documents and certificates required for registration with KMC. In their representation, the petitioners stated, *inter alia*, that despite having completed their course successfully two months ago, they had not been issued the necessary certificates and clearances to register themselves to practice medicine or continue their medical education; that similarly placed students in other colleges had received their certificates immediately; that some of them had applied for the PG entrance examination at PGIMER, Chandigarh, and their names had been published in the list of ineligible candidates for MD/MS July 2018 session for want of registration; and that they were unable to practice medicine or take up any employment for want of regular registration. They also drew the attention to an earlier order of this Court dated 13.08.2014 in W.P.Nos.35537-35540/2014 (EDN-RES), wherein, under similar circumstances involving PG students, this Court had directed the College to return the original documents and certificates and had

held that the Corporation may enforce the bond in appropriate proceedings but could not withhold the documents after the course was completed.

23. Subsequently, on 03.07.2018, ESIC, through its Headquarters at New Delhi, issued posting orders (Office Order Nos. 8, 11 to 14 of 2018) bearing No.L-11/12/3/Bond(ESIC-JR)/2017/MEC, deploying the petitioners and other MBBS pass-outs (internship completion 2018) from the College to various ESIC hospitals in different parts of the country as ESIC Junior Residents under the ESIC Residency Scheme. The petitioners in W.P.Nos.30406-30411/2018 were posted to various ESIC Hospitals across the Country, including hospital at Bhiwadi (Rajasthan), Bareilly (UP), Ankleshwar (Gujarat), Avideshwar (Gujarat), Vapi (Gujarat) and Rourkela (Odisha). The posting orders stated that the deployment was done in public interest, in fulfilment of the condition of compulsory service for a period of five years under the service bond. The candidates were directed to report for joining within seven working days of receipt of the letter.

24. Aggrieved by the posting orders and the insistence of ESIC to enforce the service bond, the petitioners filed W.P.Nos.30406-30411/2018 before this Court in July 2018.

25. The reliefs sought by the petitioners are set out below:

"(a) A Writ of Certiorari quashing the posting orders dated 03.07.2018 (Annexures H to N) bearing identical No.L-11/12/3/ Bond (ESIC-JR) /2017 / MEC issued by the 3rd Respondent (ESIC Headquarters) posting the petitioners for compulsory service for five years;

(b) A declaration that the 3rd Respondent had no legal basis to insist upon the petitioners to compulsorily serve the 3rd and 4th Respondents for a period of five years upon completion of their MBBS degree;

(c) A declaration that the bonds obtained from the petitioners by the 3rd and 4th Respondents are without authority of law and are unenforceable in law or non est in the eye of law;

(d) A direction to the 3rd and 4th Respondents to forthwith issue the original certificates and documents required for the registration of the petitioners as doctors with the Karnataka Medical Council, and a direction to the KMC and RGUHS to forthwith register the petitioners on the rolls of the respective Medical Registers."

IMPUGNED ORDER

26. The learned Single Judge allowed the writ petitions by the impugned order. The learned Single Judge examined the matter under several heads and arrived at the following conclusions:

(a) **As to competence of ESI Corporation/College to prescribe compulsory service:** The learned Single Judge held that Section 59-B of the ESI Act, which enables the Corporation to establish medical colleges, cannot be construed so as to include the power to

prescribe compulsory service to candidates seeking admission. The learned Single Judge further held that Section 92 of the Act, which empowers the Central Government to issue directions for the efficient administration of the Act, did not avail the Corporation inasmuch as no such direction providing for compulsory medical service had been issued. The learned Single Judge noted that no provision in the Act, Rules or Regulations was brought to the notice of the Court which authorised the Corporation to prescribe compulsory service.

(b) **As to the legality of the bond:** The learned Single Judge held that the Corporation, being a statutory body, can do only that which is provided by law, expressly or by necessary implication; that no provision in the Act authorises the Corporation to enter into a contract of the kind or extract a service bond from candidates as a pre-condition for admission; that the text of the instrument showed the Corporation/College was not a party to the bond although the Dean signed as a witness; and that the instrument could not be treated as an agreement enforceable by law.

(c) **As to Fundamental Rights:** The learned Single Judge held that the prescription of compulsory service robbed the citizens' choice in the matter of employment or practice of profession under Article 19(1)(g) of the Constitution, and that such a restriction could be imposed only by the authority of law; and that enforcing the service

bonds virtually amounted to enforcing bonded labour prohibited by Article 23 of the Constitution.

(d) **As to Government Quota seats:** The learned Single Judge held that since the petitioners were allottees of Government Quota seats allotted by KEA, the colleges did not have competence to super-add any condition to the admission; that the petitioners had already executed three year service bonds in favour of the State Government; and that if the ESIC bonds were also enforced, the total compulsory service period would be nine years, rendering the petitioners 'captive doctors'.

(e) **As to delay and laches:** The learned Single Judge rejected the Corporation's contention of delay and laches, holding that the choate cause of action accrued to the petitioners only when the unlawful bond was sought to be enforced, and that the contention of delay and laches was an '*unsubstantial technical plea*'.

27. In the aforesaid circumstances, the learned Single Judge quashed the impugned posting orders; restrained ESIC and its colleges from enforcing the five year service bond against the petitioners; and directed the ESIC to relieve the petitioners from the obligation of compulsory service.

28. The Corporation, being aggrieved by the aforesaid order, has filed the present appeal.

REASONS AND CONCLUSIONS

29. We may at the outset note that the ESI Act was enacted by Parliament to provide for certain benefits to employees in case of sickness, maternity and employment injury, and to make provision for certain other matters in relation thereto. ESIC is a statutory body constituted under Section 3 of the ESI Act for the administration of the Employees' State Insurance Scheme. The ESI Act comes under the aegis of the Ministry of Labour and Employment, Government of India. ESIC is funded by contributions received from employees and employers of factories and establishments covered under the ESI Scheme and does not receive any funding from the State or Central Government.

30. One of the principal objectives of the ESI Act is to provide medical care to insured persons and their families. To this end, ESIC operates a large network of hospitals and dispensaries across the country. It is stated on behalf of ESIC that there was a felt need to upgrade the medical facilities in ESIC institutions and to create a dedicated pool of medical professionals to serve the insured persons.

31. In this backdrop, the ESIC, in its 145th meeting held on 05.12.2008, deliberated and decided to establish medical colleges

with a view to having its own pool of doctors who would work in ESIC hospitals to provide the much-needed medical service to the insured employees. The Corporation envisaged that by imparting medical education and thereafter utilising the services of the students, who qualify as medical professionals, in ESIC institutions, the quality of medical benefits provided to the beneficiaries of the Scheme would be improved.

32. Thereafter, Bill No.66 of 2009 was introduced in the Lok Sabha. The said Bill was passed and was enacted as the Employees' State Insurance (Amendment) Act, 2010 (Act No.18 of 2010). The said Act received the President's assent on 24.05.2010 and came into force on 01.06.2010. By virtue of the said Amendment, Section 59-B was introduced in the ESI Act. The said provision reads as under:

“59-B. Medical and para-medical education.—The Corporation may establish medical colleges, nursing colleges and training institutes for its para-medical staff and other employees with a view to improve the quality of services provided under the Employees' State Insurance Scheme.”

33. It is material to note that the Statement of Objects and Reasons accompanying the said Amendment Bill stated, *inter alia*, that the provision was intended to improve the quality of service

delivery and raise infrastructural facilities by opening medical colleges and training facilities in order to increase the Corporation's medical and para-medical staff.

34. It is clear from the above background that ESIC had commenced medical courses with a view to improve quality of service provided under the ESI scheme.

35. ESIC is established under Section 3 of the ESI Act as a Body Corporate. One of the ESIC's functions is to promote measures for the health and other matters affecting insured persons under Section 19 of the ESI Act.

36. Section 19 of the ESI Act provides that ESIC may, in addition to the scheme of benefits specified in the ESI Act, promote measures for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons.

37. Section 56 of the ESI Act contains provisions regarding medical benefits to be provided to an insured person. Under Sub-section (2) of Section 56 of the ESI Act, such medical benefit may be given either in the form of out-patient treatment and attendance in a hospital or dispensary, clinic or other institution or by visits to

the home of the insured person or treatment as in-patient in a hospital or other institution.

38. Section 59 of the ESI Act provides for the establishment and maintenance of hospitals, etc. by ESIC. It would be apposite to refer to the said Section. The same is reproduced below:

59. Establishment and maintenance of hospitals, etc., by Corporation.-(1) The Corporation may, with the approval of the State Government, establish and maintain in a State such hospitals, dispensaries and other medical and surgical services as it may think fit for the benefit of insured persons and (where such medical benefit is extended to their families) their families.

(2) The Corporation may enter into agreement with any 2[***] local authority, private body or individual in regard to the provision of medical treatment and attendance for insured persons and (where such medical benefit extended to their families) their families, in any area and sharing the cost thereof.

[(3) The Corporation may also enter into agreement with any local authority, local body or private body for commissioning and running Employees' State Insurance hospitals through third party participation for providing medical treatment and attendance to insured persons and where such medical benefit has been extended to their families, to their families.]

39. The establishment of maintenance of hospitals by ESIC would clearly entail entering into agreements with medical

professionals, engaging staff for operating and maintaining hospitals. There can be no cavil that ESIC has the necessary powers to enter into contractual agreements for the said purpose.

40. Under Section 59B of the ESI Act, ESIC is also empowered to establish medical colleges, nursing colleges and training institutions, with a view to improve the quality of services under the Employees' State Insurance Scheme.

41. A conjoint reading of Sections 59 and 59B of the ESI Act clearly indicates that the establishment of medical colleges is not an end in itself but an aid in the provision of services under the Employees' State Insurance Scheme, which may be through the hospitals and medical institutions established and maintained by ESIC.

42. In view of the above, the contention that there is no power granted to ESIC to insist on a service bond from students admitted to MBBS cannot be accepted. Since ESIC established the College to improve the quality of services provided under the Employees' State Insurance Scheme, it is apparent that it could enter into contractual agreements with students to render services at its hospitals. This is clearly in aid of its object.

43. The contention that the ESI Act or Rules must provide a specific power to enter into a particular kind of contractual agreement, which entails a student providing a service bond, is without merit. ESIC is fully empowered to enter into contractual arrangements. The petitioners' admission to the College is also a contractual arrangement under which medical education and training is imparted to the petitioners. In consideration of the same, the students are obligated to pay the fees as fixed, as well as to serve ESIC hospitals for a period as agreed in terms of the Service Bond.

44. The decision of the learned Single Judge to set aside the service bond on the ground that ESIC did not have any power for insisting on such bond, is erroneous. The learned Single Judge had concluded that the service bond executed by the petitioners is not a contract. The learned Single Judge reasoned that under Section 2(h) of the Indian Contract Act, 1872, a contract is an agreement enforceable by law and the same requires two parties – an offeror and an acceptor. The learned Single Judge noted that the bond is signed by the Dean of the College as a witness, but nothing has been placed on record to indicate that the Dean is the

delegate of the Director General of ESIC. Thus, the bond executed cannot be termed as an agreement.

45. In our view, the said reasoning is flawed. The petitioners contend that they were granted admission to the College contingent on their executing the service bond. The requirement to execute the Service Bond is also stipulated in the College's prospectus. Once it is acknowledged that the execution of the bond was a condition for the petitioners' admission to the College, it follows that the service bond was executed as consideration for providing of educational services. It is also undisputed that ESIC has borne much of the cost of education. ESIC had funded the establishment and the operations of the College. Plainly, the petitioners cannot be heard to claim that they are entitled to receive education but have no obligation to pay even a fraction of its cost.

46. We may at this stage refer to the terms and conditions of the bond:

"The bond proforma required the student (referred to as 'the Bounden') and a parent or guardian (referred to as 'the Surety') to bind themselves jointly and severally to pay to the Corporation on demand the total amount of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand only), stated to be the amount spent by the Corporation for their studies, with 15% interest as fixed by the Corporation. The operative recitals of the bond, as executed by the petitioner No. 1, are set out below:

“ WHEREAS the bounden ABHISHEK P CHOUDHARI has been selected to Undergo MBBS in Corporation Medical College in the merit quota for the duration of the course prescribed by Medical Council of India.

AND WHEREAS the Corporation have agreed to incur the expenses on condition that after Successful completion of the course of study within the prescribed period the bounden shall serve the ESI Corporation/ESI scheme for a period of five years in any Institution of the Corporation/Scheme anywhere in India, if the corporation requires and also subject to the terms and conditions hereinafter appearing and the bounden and the sureties have agreed to the same.

NOW the condition of the above written obligation is that in the event the Bounden after successful completion of the Graduate Course of study to which he/she was selected fails to serve. The Corporation for period of five years, if required by the Corporation, the Bounden and sureties shall forthwith pay to the Corporation for violation of Condition, on demand the total amount of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only) the amount spent by the Corporation for their studies along with 15% interest as fixed by the Corporation. On the quantum of amount payable by the Bounden and the Sureties the decision of the Corporation shall be final and legally binding on the bounden and sureties and upon the payment of such sum of the above written obligation shall be discharged.

PROVIDED further that the bounden and the sureties do hereby agree that if the Bounden fails to serve the Corporation for a period of five years, if Corporation requires, it may be construed as ‘professional misconduct’ and the fact reported to the

Medical Council of India for suitable action including cancellation of Registration by the Council. being in force or in such other manner as the Corporation may deem fit.

The liabilities of the sureties under the this Bond is Co-extensive with that of the bounden and shall not be affected by the Corporation given time or any indigence to the bounden or by the Corporation varying of the terms and conditions herein contained.

Signed this 30th Day of JULY in the year 2012 by the bounden Shri.ABHISHEK P CHOUDHARI”

The bond contained a clause providing that failure to serve the Corporation for five years, if required, may be construed as ‘professional misconduct’ and the fact reported to the Medical Council of India for suitable action including cancellation of registration.”

47. As noted above, the Memorandum dated 09.03.2010 specifies the tuition structure and also provides for the furnishing of a service bond. As observed earlier, there is no cavil that the fee paid by the petitioners for availing the education is below the cost incurred by ESIC. Thus, the Memorandum also provided that if the student ceases to be in the service of ESIC before completion of the bond period, the cost of the entire course could be recovered.

48. Having acknowledged that the execution of the bond was a condition of admission to the college, there is no ground to accept

that the bond was not an agreement between the parties, as held by the learned Single Judge.

49. Next, we may address the contention that, the prescription of compulsory service violates Article 19(1)(g) or Article 23 of the Constitution of India.

50. It is necessary to note that there is no compulsion for a student to necessarily serve ESIC. However, it is always open for the students to pay the amount as agreed under the service bond. We may note that there is no allegation that a sum of ₹7,50,000/-, which is mentioned in the bond, is in the nature of a penalty or *in terrorem*. Undisputedly, the said amount would barely cover the costs of education availed by the students. Thus, we are unable to accept that the terms of the bond violate Article 19(1)(g) of the Constitution of India.

51. The petitioners may agree to serve the ESIC Institutions by rendering service for a stipulated period or pay the costs incurred by ESIC for their education.

52. We may now refer to Article 23 of the Constitution of India which reads as under:

"23. Prohibition of traffic in human beings and forced labour. - (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

53. A plain reading of the Sub-Article (1) of Article 23 of the Constitution indicates that it prohibits traffic in human beings and forced labour and other forms of exploitation. The conclusion that executing a service bond as a part of availing education for subsidised rate is bonded labour is without any basis in law. It is common for students to avail themselves of study loans to defer the cost of education. They cannot be heard to state that their obligation to repay the loan after attaining the qualifications is bonded labour, even though a substantial part of their income may be used to service the student loan. The agreement to serve a minimum period, as consideration for having received subsidised medical education and being trained, cannot be conflated with human trafficking, forced labour and other kinds of exploitation.

54. As noted above, the petitioners are not compelled to render their service to ESIC. It is always open for them to pay the amount

of ₹7,50,000/- (subsequently relaxed to ₹5,00,000/-), which is essentially a compensation for the costs incurred by ESIC for providing medical education.

55. In **Niranjan Shankar Golikari v. Century Spinning and Manufacturing Company Limited [(1967) 2 SCR 378]**, the Supreme Court considered the challenge to the terms of an agreement, which provided that the employee would devote his entire time and energy exclusively to the business and affairs of the employer and would not engage directly or indirectly in any other business. The agreement also provided that in the event the employee leaves the services of the employer in breach of the terms of the agreement, before the expiry of a period of five years, he would be liable to pay salary, that he would have received during the period of 6 months and further reimburse the employer an amount that the company may have spent on his training. Paragraph 3 of the said decision, which sets out the clauses under challenge in that case, is reproduced below:

"3. Clause 6 of the agreement provided:

"The employee shall, during the period of his employment and any renewal thereof, honestly, faithfully, diligently and efficiently to the utmost of his power and skill

(a) * * *

(b) devote the whole of his time and energy exclusively to the business and affairs of the company and shall not engage directly or indirectly in any business or serve whether as principal, agent, partner or employee, or in any other capacity either full time or part time in any business whatsoever other than that of the company.”

Clause 9 provided that during the continuance of his employment as well as thereafter the employee shall keep confidential and prevent divulgence of any and all information, instruments, documents, etc., of the company that might come to his knowledge. Clause 14 provided that if the company were to close its business or curtail its activities due to circumstances beyond its control and if it found that it was no longer possible to employ the employee any further it should have option to terminate his services by giving him three months' notice or three months' salary in lieu thereof. Clause 17 provided as follows:

“In the event of the employee leaving, abandoning or resigning the service of the company in breach of the terms of the agreement before the expiry of the said period of five years he shall not directly or indirectly engage in or carry on of his own accord or in partnership with others the business at present being carried on by the company and he shall not serve in any capacity, whatsoever or be associated with any person, firm or company carrying on such business for the remainder of the said period and in addition pay to the company as liquidated damages an amount equal to the salaries the employee would have received during the period of six months thereafter and shall further reimburse to the company any amount that the company may have spent on the employee's training.”

56. The Supreme Court rejected the contention that clauses such as those above would offend Section 27 of the Indian Contract Act, 1872 [hereinafter, '**Contract Act**']. The relevant extract of the said decision is reproduced below:

"14. A similar distinction has also been drawn by courts in India and a restraint by which a person binds himself during the term of his agreement directly or indirectly not to take service with any other employer or be engaged by a third party has been held not to be void and not against Section 27 of the Contract Act. In *Brahmaputra Tea Co.Ltd. v. Scarth* the condition under which the covenantee was partially restrained from competing after the term of his engagement was over with his former employer was held to be bad but the condition by which he bound himself during the term of his agreement, not, directly or indirectly, to compete with his employer was held good. At p. 550 of the report the court observed that an agreement of service by which a person binds himself during the term of the agreement not to take service with any one else, or directly or indirectly take part in, promote or aid any business in direct competition with that of his employer was not hit by Section 27. The Court observed:

“An agreement to serve a person exclusively for a definite term is a lawful agreement, and it is difficult to see how that can be unlawful which is essential to its fulfilment, and to the due protection of the interests of the employer, while the agreement is in force.”

In *Deshpande v. Arbind Mills Co.* an agreement of service contained both a positive covenant viz. that the employee shall devote his whole-time attention to the service of the employers and also a negative covenant preventing the employee from

working elsewhere during the term of the agreement. Relying on *Pragji V. Pranjiwan Charlesworth v. MacDonald*, *Madras Railway Company v. Rust*, *Subba Naidu v. Haji Badsha Sahib* and *Burn & Co. v. MacDonald* as instances where such a negative covenant was enforced, the learned Judges observed that Illustrations (c) and (d) to Section 57 of the Specific Relief Act in terms recognised such contracts and the existence of negative covenants therein and that therefore the contention that the existence of such a negative covenant in a service agreement made the agreement void on the ground that it was in restraint of trade and contrary to Section 27 of the Contract Act had no validity.

17. The result of the above discussion is that considerations against restrictive covenants are different in cases where the restriction is to apply during the period after the termination of the contract than those in cases where it is to operate during the period of the contract.

Negative covenants operative during the period of the contract of employment when the employee is bound to serve his employer exclusively are generally not regarded as restraint of trade and therefore do not fall under Section 27 of the Contract Act. A negative covenant that the employee would not engage himself in a trade or business or would not get himself employed by any other master for whom he would perform similar or substantially similar duties is not therefore a restraint of trade unless the contract as aforesaid is unconscionable or excessively harsh or unreasonable or one-sided as in the case of W.H. Milsted & Son Ltd. Both the trial court and the High Court have found, and in our view, rightly, that the negative covenant in the present case restricted as it is to the period of employment and to work similar or substantially similar to the one carried on by the appellant when he was in the employ of the respondent Company was reasonable and necessary for the protection of the company's interests and not such as the court would refuse to enforce. There is therefore no validity in the contention that the negative covenant contained in clause 17 amounted to a restraint of trade and therefore against public policy.

18. The next question is whether the injunction in the terms in which it is framed should have been granted. There is no doubt that the courts have a wide discretion to enforce by injunction a negative covenant. Both the courts below have concurrently found that the apprehension of the respondent Company that information regarding the special processes and the special machinery imparted to and acquired by the appellant during the period of training and thereafter might be divulged was justified; that the information and knowledge disclosed to him during this period was different from the general knowledge and experience that he might have gained while in the service of the respondent Company and that it was against his

disclosing the former to the rival company which required protection. It was argued however that the terms of clause 17 were too wide and that the court cannot sever the good from the bad and issue an injunction to the extent that was good. But the rule against severance applies to cases where the covenant is bad in law and it is in such cases that the court is precluded from severing the good from the bad. But there is nothing to prevent the court from granting a limited injunction to the extent that is necessary to protect the employer's interests where the negative stipulation is not void. There is also nothing to show that if the negative covenant is enforced the appellant would be driven to idleness or would be compelled to go back to the respondent Company. It may be that if he is not permitted to get himself employed in another similar employment he might perhaps get a lesser remuneration than the one agreed to by Rajasthan Rayon. But that is no consideration against enforcing the covenant. The evidence is clear that the appellant has torn the agreement to pieces only because he was offered a higher remuneration. Obviously he cannot be heard to say that no injunction should be granted against him to enforce the negative covenant which is not opposed to public policy. The injunction issued against him is restricted as to time, the nature of employment and as to area and cannot therefore be said to be too wide or unreasonable or unnecessary for the protection of the interests of the respondent Company."

57. In **Subri Ghosh v. Indian Iron and Steel Company**¹, a Division Bench of the High Court of Calcutta, considered the appeal of an employee who had tendered his resignation after undergoing six months and few days of training. Under the employment agreement, the said employee agreed to serve for a period of five years. He had also agreed that in the event that he

¹ (1976) SCC OnLine Cal 377

left the employment, he would repay the costs of his training in a graded manner. If he left during the first year, he would pay the entire amount of ₹500 per month for the period during which he had received training. This amount would successively reduce if he left the employment in subsequent years. The Court rejected the contention that the employment agreement was null and void. The Court also found that the liquidated damages were reasonable and the agreement to pay the same was binding.

58. We may also refer to the decision of Division Bench of the High Court of Kerala in **Dr.Ayisha Beegam Devasya House v. State of Kerala and others**². In the said case, the Court had considered a challenge of students who had joined postgraduate medical courses. The parents of those students had, at the time of joining, executed bonds with the college/management that the certificates of the students would be withheld till they complete "*1 year compulsory employment or on payment of compensation*". The execution of the said bonds was challenged on several grounds, including the doctrine of public policy. In this regard, the Division Bench held as under:

² (2018) SCC OnLine Ker 1287

"So we compel ourselves to conclude that the doctrine of public policy is highly subjective, shifting, and even changing. Statutorily examined, the compulsion of the students' fulfilling the bond-obligation does not seem to fall foul of any public policy. The Central Government, through Ext.P1, permitted the college, university, or the State Government to impose its own conditions for admission. The students, consciously, consented to the conditions, executed the bonds, and never challenged them—until they completed their course. True, students have a weak bargaining power in a contract vis-à-vis the college or the establishment. So they may have signed on the dotted lines, without demur. That said, still their conduct while they continued the course is inexplicable. They could have challenged the bond obligations. They did not.

43. Granted, education occupies the pride of place, and the students deserve every sympathy. But let us look at what underlines this transaction : the State or the college insisting on compulsory service or compensation. The State acted in its permissible limits and imposed an eligibility criterion; the student agreed and got admitted. The State compels the student to serve one year in the State where she had honed her medical skills and acquired a higher qualification. After all the State invests and subsidizes medical education. In the scenario of limited resources, spending somewhere amounts to not spending somewhere else. So those who get benefited must repay their debt—of gratitude.

44. Viewed differently, the doors are not shut on the students. They may serve the State and be paid or sever their relation and leave it; it comes at a price : paying liquidated damages. If the students leave for greener pastures, they must be prepared to pay, to compensate. Medical profession—tough as it is and, perhaps, lucrative as it may be—is not all about money; it has still an element of service.

45. About the State's retaining the documents, we may observe that most students are from other states. After their leaving the place, it is well nigh impossible for the State or the colleges to enforce recovery. So, as is permissible under law, and as agreed in Clause 2.2 of

the State prospectus, it can enforce its contractual right, by retaining the documents.

The Options:

46. So the options for the student are two-fold : (1) The students must serve the bond period; or (2) they may, instead, pay the liquidated damages. For the college or Government, the options are these : (a) it can insist on the student's serving the bond period; (2) it can, on the student's refusal, recover the liquidated damages; (3) till such recovery, it can withhold the documents, as a matter of particular lien."

59. In **Dr. Aditya Kumar v. State of Uttarakhand and others**³, the Division Bench of the High Court of Uttarakhand, in the context of a similar challenge, observed as under:

"It is, indeed, trite to state that the parties to a contract are bound by the terms of the contract. A bare perusal of the bond executed by the petitioner on 26.08.2013 clearly reveals that "a duty has been imposed upon the petitioner to serve the State of Uttarakhand as a Medical Officer/Specialist on contract basis at least for a minimum period of two years in any government hospital or health centre situated in hilly region of the State, failing which they shall be liable severally or jointly to pay the Government full tuition fees of the entire M.D./M.S. course calculated at prevailing rate along with such interest as may be determined by the Government." This condition contained in the contract requires the petitioner to serve for a minimum period of two years in the "hilly region"."

60. The issues raised in the present appeal are no longer *res integra* in view of the Supreme Court's authoritative decision in **Association of Medical Superspecialty Aspirants and**

³ (2021) SCC OnLine Utt 433

Residents and others v. Union of India and others⁴. In the said case, the Supreme Court considered a batch of appeals and petitions challenging the imposition of compulsory bonds for undertaking super-speciality courses in various States. The said batch of petitions also included appeals against the decision of the Division Bench of the High Court of Calcutta arising from a writ petition challenging the notification dated 10.06.2014 whereby, every post graduate trainee was directed to execute a bond to serve the State Government for a period of three years after successful completion of post-doctoral/MD/MS course and for a period of two years after successful completion of the PG diploma course. On failure to serve the State Government, the doctors were required to pay a sum of ₹30,00,000/-. The said notification partially modified the earlier notification dated 31.07.2013, where the period of service was stipulated as one year, and the failure to complete the service entailed the liability to pay compensation of ₹10,00,000/-.

61. The learned Single Judge upheld the earlier notification dated 31.07.2013. However, set aside the notification dated 10.06.2014, which had enhanced the term of the compulsory

⁴ (2019) 8 SCC 607

service and the amount of compensation. Both the State Government of West Bengal and the doctors had challenged the decision of the learned Single Judge before the Division Bench of the Calcutta High Court. The Division Bench upheld the notifications. The following issues were framed by the Division Bench for consideration:

"(i) Could the State Government have introduced the bond system by issuing the notifications which are under challenge in the present proceeding or was legislation necessary for that purpose?

(ii) Do the notifications impinge upon the freedom of the petitioners to practice any profession, or to carry on any occupation, trade or business guaranteed under Article 19(1)(g) of the Constitution?

(iii) Were the writ petitioners aware of the bond system before opting for West Bengal as their academic destination for postgraduate medical studies?

(iv) Is the bond system in restraint of a lawful profession, trade or business and is thus violative of Section 27 of the Contract Act?

(v) Is there any such infirmity in the judgment and order impugned before us as would warrant interference by this Court?"

62. The Division Bench held that the impugned notification did not violate Article 19(1)(g) of the Constitution of India or Section 27 of the Contract Act.

63. The Supreme Court upheld the said conclusion. In regard to the challenge to the service bond as falling foul of Article 19(1)(g) of the Constitution of India, the Supreme Court held as under:

"20. According to the appellants, the right to carry on their profession which is guaranteed by Article 19(1)(g) is violated by the compulsory bonds. They contend that the compulsory bonds place a restriction on their right to carry on their profession on completion of their course. It is also submitted that any restriction on their right to carry on their profession by the State Government can be made only by a "law" as per Article 19(6) of the Constitution. Consequently, the notifications that were issued by the State Governments fall foul of Article 19(1)(g). The compulsory bond executed by the appellants is at the time of their admissions into postgraduate and superspeciality courses. Conditions imposed for admission to a medical college will not directly violate the right of an individual to carry on his profession. The right to carry on the profession would start on the completion of the course. At the outset, there is no doubt that no right inheres in an individual to receive higher education. Violation of a right guaranteed under Article 19(1)(g) does not arise in a case pertaining to admission to a college. There is no doubt, that the condition that is imposed has a connection with the professional activity of a doctor on completion of the course. However, the appellants have, without any protest, accepted the admissions and executed the compulsory bonds. Execution of bonds is part of a composite package. We are in agreement with the judgment of the Calcutta High Court that the appellants have not been able to succeed in their attempt of assailing the notifications for being violative of Article 19(1)(g) of the Constitution. We uphold the said finding of the Division Bench."

64. The Supreme Court also rejected the contention that the bond for compulsory service violated Article 23 of the Constitution of India. The relevant extract of the decision of is set out below:

"35. The submission of Mr Huzefa Ahmadi, learned Senior Counsel for the appellants is that the conditions of the bond per se amount to "forced labour" and thus are violative of Article 23(1) of the Constitution. Mr Dwivedi expostulated the said submission by referring to Article 23(2) which confers power on the State to impose compulsory service for public purpose. Reliance was placed upon the Constituent Assembly Debates by Mr Dwivedi explaining the scope of compulsory employment for public purpose under Article 23(2) of the Constitution of India. The appellants who are required to work for a short period on a decent stipend cannot complain that they are made to perform "forced labour", especially after the appellants have taken an informed decision to avail the benefits of admission in government medical colleges and received subsidised education. By no means, the service rendered by the appellants in government hospitals would fall under the expression of "forced labour".

36. The 13th Amendment to the US Constitution prohibits slavery and involuntary servitude. The Supreme Court of the United States held that compulsory employment for public purpose does not amount to "involuntary servitude" in *Robertson v. Baldwin* and *Butler v. Perry*. Article 23(2) of the Constitution enables the State Governments to require the appellants to do compulsory service in the government hospitals which is undoubtedly for the benefit of the public."

65. In regard to the question whether a compulsory bond fell foul of Section 27 of the Contract Act, the Supreme Court concurred with the decision of the Division Bench and rejected the contention

that the bonds in question violated Section 27 of the Contract Act.

The relevant extract of the said decision reads as under:

"39. The argument advanced on behalf of the appellants that compulsory bonds placed a restraint on their profession and thus, would be contrary to Section 27 of the Contract Act, 1872. The High Court of Calcutta repelled this submission by holding that the compulsory bond does not amount to any restraint on the professional activity of the appellants. The High Court observed that the appellants are offered the job of Medical Officer in the State of West Bengal and that the covenant in the compulsory bond operates only during the period of such employment. Relying upon the dictum of Lord Morris in *Esso Petroleum Co. Ltd. v. Harper's Garage (Stourport) Ltd.* that:

"if A made a contract under which he willingly agreed to serve B on reasonable terms for a few years and to give his whole working time to B, it would be surprising indeed, if it were sought to describe the contract as being in restraint of trade; in fact, such a contract would very likely be for the advancement of trade."

The High Court concluded that a contract entered into by appellants to serve the Government for a few years under reasonable terms cannot be described as one in restraint of trade. We are in agreement with the findings recorded by the High Court of Calcutta. Therefore, we are of the considered opinion that the conditions of compulsory bonds for admission to postgraduate and superspeciality courses in government medical colleges are not in violation of Section 27 of the Contract Act, 1872.

40. The upshot of the above discussion is that the writ petitions and the appeals deserve to be dismissed. Consequently, all the doctors who have executed compulsory bonds shall be bound by the conditions contained therein."

66. In view of the aforesaid, we are unable to accept that the petitioners are not liable to perform the bond executed by them.

67. The petitioners had also contended that they had already executed a bond to provide service for a period of one year with the State of Karnataka, and therefore, imposing a condition to provide additional service for a period of five years would be highly onerous and unreasonable. In addition, the petitioners had also raised the contention that they were not aware of any condition to furnish a service bond at the time of opting for counselling for admission to the College. It was also contended that the College had surrendered its seats to the State and therefore, could not impose any additional conditions.

68. As noticed at the outset, ESIC had reduced the requirement for rendering compulsory service to only one year, and it had further reduced the amount payable by the students, if they failed to render the said service to ₹5,00,000/-. Thus, even if the service required to be rendered by the petitioners to the State Government is taken into consideration, the total period of compulsory service is now confined to only two years. We are unable to accept that the period of two years' compulsory service or the payment of ₹5,00,000/- in lieu thereof is in any way onerous, as contended. We

may also note that ESIC had, during the proceedings in the writ petition, readily accepted that the period of compulsory service with the State be reduced from the term of five years as stipulated under the bond. This period is further reduced to one year prospectively from the date of the memorandum, that is, from 28.07.2020. Thus, in the case of the petitioners, they are required to serve only one year with the ESIC hospitals as of that date.

69. The contention that the petitioners were unaware of the requirement of furnishing a compulsory bond is seriously contested. ESIC claims that it had uploaded the prospectus on the website of ESIC, PGIMSR, Rajajinagar, Bengaluru (www.esipgirnr.kar.nic.in). ESIC further claimed that the website of the Ministry of Health and Family Welfare (www.mohfw.nic.in) also mentions the 'Bond applicable after completion of the course' in the 'Other Information' row under the list of colleges listed for undergraduate counselling in the year 2012.

70. The learned counsel appearing for the ESIC also submitted that the conditions for providing service bonds were already in place for post-graduate courses, which was well known and the students were fully aware of the same.

71. In our view, the said controversy may not be of much significance. This is because there is no dispute that the petitioners were called upon to furnish the service bond at the material time, and there is no dispute that at the time of the admission, they had done so. Thus, concededly, they had taken admission to the college on furnishing the service bond as required. They had not challenged the same either at the time of taking admission or immediately thereafter.

72. More importantly, the petitioners had undergone the course at subsidised costs on the basis of a compulsory bond. Plainly, they cannot be permitted to challenge the same after completion of the entire course and after having availed the corresponding benefit of education at subsidized costs, which may not have been available to them, if they had not furnished the service bond. The petitioners cannot now be heard to make a grievance of not being aware of the condition of furnishing a bond at the time of counselling.

73. It is contended on behalf of the petitioners that the petitioners did not raise any objection at that stage because raising the same would amount to forfeiting the right to admission to the College, given the tight schedule of counselling. However, even if we accept

the same, it did not prevent the petitioners from raising the dispute immediately thereafter and availing themselves of the remedies at that stage.

74. We may note that the only protest that is placed on record and which is also disputed by the learned counsel for the ESIC are the letters written by petitioner No.1 and his father. It is stated that petitioner No.1, had addressed a letter dated 30.07.2012 to the Executive Director, KEA, requesting for a change in College and his father had sent a letter on the same date to the Dean of the College complaining that there was no specific condition in the website of CET or ESIC Medical College regarding furnishing of a bond and requested that his son be absolved of furnishing of the service bond. However, there is nothing on record to indicate that petitioner No. 1 thereafter followed up with the said request. He had certainly not taken any steps to challenge the same at the material time.

75. In the given facts, we are unable to accept that the delay in availing the remedies ought to be countenanced.

76. The learned Single Judge had rejected the objections raised by ESIC in this regard on the ground that it is an unsubstantial

technical plea. We are unable to concur with the said view. Once it is accepted that execution of the service bond is an integral part of the consideration for the education provided to the petitioners, it cannot be stated that availing of the educational services/training unreservedly over a period of over five and a half years to challenge the consideration for the same is a mere technical plea.

77. ESIC established the College, and it subsidised the cost at which the education was imparted to the petitioners with the object that they, on completion of their education, would render quality service at their hospital. It is difficult to accept that the petitioners could be permitted to challenge the condition of furnishing a bond after they had availed the benefit of receiving education, the cost of which was subsidised by ESIC.

78. The contention that the ESIC could not impose a condition of service, as the petitioners were admitted against seats released to the State Government, is also not persuasive. ESIC/College is entitled to fix the fees for providing the course and, as noted above, execution of the service bond is a part of the consideration for provision of education and training.

79. In view of the above, the present appeal is allowed and the impugned order is set aside.

80. We may note that during the course of the submissions, it was pointed out that some of the petitioners may have already taken up employment elsewhere and may not be in a position to render the services. It is also contended that some of the petitioners may have acquired further qualifications and therefore, if they are called upon to render any service at ESIC hospital, it should be commensurate with their experience.

81. Those petitioners who are unable to join would necessarily be obliged to pay the reduced amount of ₹5,00,000/- with interest. This Court is informed that some of the petitioners have paid the bond amount. It is also open for the petitioners to approach ESIC to grant them a reasonable time to join the services, and needless to state, ESIC would consider reasonable requests sympathetically. Illustratively, if a student is midway through another course, it would be open for the student to request that the commencement of the period of compulsory service be deferred and he be given appropriate time to join the services.

82. Insofar as those petitioners who are willing to render the service (which is now confined to a period of one year), ESIC is at liberty to avail the services of those petitioners at any of the ESIC hospitals. However, ESIC would also consider placing the petitioners in positions commensurate with their experience and further qualifications.

83. The appeal is allowed in the aforesaid terms.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

KPS