

W.P. No.17560/2015

(Gyanjeet Sewa Mission Trust vs. Union of India and others)

16.10.2015

Shri Nidhesh Gupta, Senior Advocate with Shri Amalpushp Shroti, Advocate for the petitioner.

Shri Vikram Singh, Advocate for the respondent No.1.

Shri Anoop Nair, Advocate for the respondent No.2.

Shri Samdarshi Tiwari, Dy. Advocate General for the respondent Nos.3 and 4.

Shri P.K. Kaurav and Shri Kapil Duggal, Advocates for the respondent No.5.

Shri Paritosh Gupta, Advocate for the intervener.

Heard counsel for the parties.

This is third round of writ petition by the petitioner – Trust to question the manner in which the proposal for grant of permission to open a new medical college for the Academic Year 2015-2016, has been processed. The petitioner made a formal application on 26th August, 2014 for permission, with a sanguine hope that the proposal will be processed well in time to facilitate the petitioner to commence the Medical College providing for 150 medical seats at Jabalpur.

2. The Medical Council of India, however, submitted a negative recommendation. The petitioner, therefore, had to approach this Court on 26th May, 2015 by way of W.P.

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No.7915/2015 to question the decision of the Executive Committee of the Medical Council of India dated 29th April, 2015 and communication dated 11th May, 2015. That writ petition was allowed on 1st July, 2015 by a speaking order with direction to the Medical Council of India to reconsider the scheme for establishment of a new Medical College submitted by the petitioner-Trust on all other issues left open in the said decision and forward its appropriate recommendation, expeditiously, preferably within one week from the date of order to the Central Government – so that the Central Government, being the final Authority will be able to take a final decision in the matter. The Medical Council of India, however, questioned the correctness of the said judgment before the Supreme Court by way of S.L.P. (Civil) No(s).18125/2015, which was dismissed on 18th August, 2015 by the Supreme Court. Thereafter, the Medical Council of India restated its negative recommendation to permit the petitioner-Trust to open a new Medical College.

3. The Central Government, acting upon the said recommendation, once again, passed order on the basis of the said recommendation, rejecting the proposal submitted by the petitioner, without giving opportunity of hearing to the petitioner-Trust.

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4. As a result, second writ petition was filed before this Court being W.P. No.15498/2015 which was finally allowed by a speaking order passed on 30th September, 2015. The Court not only found fault with the Central Government for not giving opportunity of hearing to the petitioner, before passing adverse order, but also issued directions to reexamine the matter afresh and take final decision after following due process and more particularly after considering the explanation offered by the petitioner pointwise. The Court in paragraph-10 clearly directed the respondent No.1 to pass order on all such issues to be raised by the petitioner-Trust pointwise and record reasons for not accepting the explanation given by the petitioner, so that the petitioner could avail of further remedy, as may be permissible in law.

5. Pursuant to the said decision, the petitioner once again stood relegated before the respondent No.1. The respondent No.1, on this occasion, gave opportunity to the petitioner-Trust, but, once again rejected the proposal for the following reasons:-

“8. And whereas, I have examined the contentions made by the Trust and the oral and written submission made by the Trust during the hearing and my findings are as under :

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i) based on recommendation of MCI, the scheme of the Trust for establishment of new medical college at Jabalpur was disapproved and conveyed through speed post at the address furnished by the Trust vide Ministry letter no.U-12012/462/2015-ME (P-II) dated 15.6.2015 FTS No: 51254 (Annexure -I). The list of approved schemes and disapproved schemes for the academic year 2015-16 was also hosted on the website of the Ministry on 17.06.2015. The name of Gyanjeet Sewa Mission Trust, Jabalpur appears at Sl.No.34 in the list of disapproved colleges for establishment of new medical colleges for the academic year 2015-16 (Annexure -II). Therefore, it is clear that the scheme had been disapproved by the competent authority and had been conveyed to the Trust following the due procedure and as per time schedule. Hence, no case is made out for granting deemed approval as per clause 10 (A) (5) of the IMC Act, 1956.

ii) the submission of College regarding denial of deficiencies was cross checked with the Standard Assessment Form (SAF) enclosed with the MCI recommendation dated 24.8.2015. The attention of Trust representatives was brought, in particular, to page 16 of the SAF. It is clear that the OPD attendance of 68 was till the end of OPD and not till 11:00 AM as claimed by the Trust. The Assessors have noted that the clinical material in terms of casualty attendance, admission & discharges and bed occupancy as submitted by the college seem inflated.

It was brought to the notice of the Trust representatives that the SAF was signed on all the pages by the Assessors and the Dean of the College on the day of inspection i.e. 21.8.2015. The Dean has agreed with the findings and appended her signature. The deficiencies were thus accepted by the college authorities. To this the Trust representatives claimed that the Dean was

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made to sign the SAF under duress. They could not, however, answer why a dissent note was not recorded on the SAF. They could also not produce any evidence that they had subsequently protested with any of the authorities. In absence of such a protest, it would be deemed that the college authorities had ipso facto agreed to the assessor's report.

iii) a preliminary perusal of the declaration forms regarding faculty submitted by the Trust suggest that full details are not provided in many cases viz. salary account number and details are not provided, proof of residence is not provided, declaration forms are not counter signed. The documentary proof submitted by the Trust, therefore, appears to be non conclusive. Suffice it to say that the evidence submitted is not sufficient to merit upholding the Trust's contention that the deficiencies as pointed out by MCI in its letter dated 24.8.2015 and as chronicled at para 6 *ibid*, have been duly rectified.

9. And whereas, in view of the deficiencies pointed out by MCI during the inspection/assessment dated 21.8.2015 and my findings as above, I hold that the Trust's application for establishment of new medical college at Jabalpur does not merit approval. Medical Council of India is the statutory body entrusted with the responsibility of maintaining the standards of medical education in the country. It is not open for the Central Government to consider granting permission if the colleges are not complying with the requirements under the Regulations of MCI.

10. Now, therefore, in my considered opinion the recommendation of MCI for disapproval of the scheme for establishment of new medical college at Jabalpur, Madhya Pradesh by Gyanjeet Sewa Mission Trust, Jabalpur for the

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academic year 2015-16 is upheld and the Trust's application dated 26.8.2014 for setting up of a new Medical College at Jabalpur is hereby disapproved.”

6. The grievance of the petitioner on this occasion is twofold. The first grievance is that the decision of the respondent No.1 is in complete disregard to the direction given by the Court to deal with the point-wise explanation offered by the petitioner-Trust, in the context of the deficiencies mentioned in the recommendation submitted by the Medical Council of India. That analysis is conspicuously absent in the impugned order. The more important grievance, which commends to us, is, that the reasons recorded by the respondent No.1 are not only cryptic but manifestly wrong and in the teeth of the factual position emanating from the material made available to the Medical Council of India on the concerned issue and forwarded to the Central Government.

7. It is submitted that the petitioner had offered pointwise explanation on 3rd October, 2015, which was within the knowledge of the respondent No.1. The format for submission of information, submitted by the petitioner reads thus:-

“Format for submissions of Informations :

(Please bring information separately for each subject)

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Name of the Medical College : Sukh Sagar Medical College & Hospital
 Owned by Gyanjeet Sewa Mission Trust,
 Jabalpur (M.P.)

Subject Name (Seat Applied): MBBS 150 (Seats)

S. No.	Deficiencies pointed out by MCI	Submission of College on deficiencies	Annexure No.	Remarks
1.	Deficiency in Teaching faculty 83.7%	<p>This deficiency is absolutely false. There is Complete faculty duly appointed by the applicant, details including declaration forms appointment letter and various other details are provided in annexure and on the basis of these documents, the applicant Trust states that there was absolutely no deficiency.</p> <p>Team of Assessors reached our institute at 10:50 AM, handed over letter, dated 20.08.2015 and the Attendance sheet to our Dean, and conducted Head Count at 11:00 AM, it is impossible to take attendance of all doctors within 10 MINS as the whole campus is spread on 27 Acres of land, in 6 floors having built up area of approx. 10 lacs sq ft. Therefore, the Assessors counted only those whose attendance could be given in minutes and the Faculty whose attendance was given after 11 AM was not counted.</p> <p>The applicant Trust reiterates that it has full teaching faculty as per MCI norms.</p>	1 & 2	
2.	Shortage of Resident is 100%	<p>Team of Assessors reached our institute at 10:50 AM and handed over the Attendance sheet to our Dean, and conducted Head Count at 11:00 AM, it is impossible to gather all doctors within 10MINS as the whole campus is spread on 27 Acres of land, in 6 floors having built up area of approx. 10 lacs sq ft.</p> <p>The applicant Trust has all residents as per MCI norms.</p>	1 & 2	
3.	OPD attendance was only 68 on the day of assessment	68 OPD attendance is of 11 AM, at the end of the day OPD attendance was 604, MCI assessor checked our computerized system and noted the same as well, which is as per MCI norms.		
4.	Casualty Attendance was	Casualty attendance was also taken at 11:00 AM on the day of inspection, which is data for 9:00		

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	only 4 on the day of Assessment	AM to 11:00 AM only and Casualty Attendance for 24HRS was not recorded. Casualty attendance was 23	
5.	There were NIL discharges and admissions as verified by the assessor. Values given by Institute are inflated.	These comments are based on the data taken by the assessors at 12.00 P.M. There were 64 new admissions on the day of inspection, which was noted by the assessor at the end of the day. Please find enclosed a list of day wise admissions and discharges for the month of September.	3
6.	Only 2 Beds were occupied on the day of assessment giving bed occupancy of only 66% which is grossly inadequate against the requirement of 60%. Values given by institute is inflated, even so bed occupancy given by institute is 31% which is inadequate. Average bed occupancy given by institute is 21%.	The bed occupancy on the day of assessment was 93, which was considered by assessors for computing bed occupancy. However, on computing the random average percentage by the assessors it was found to be 64%. The hospital is operative since more than a year, and thousand and thousands of patients are being treated in this state of the art hospital at very nominal charges. We are attaching herewith clinical data summary report for the months from January 2015 to June 2015. Bed occupancy is as per the norms of MCI. Even the records taken by the assessors for random three days of previous three months shows the required bed occupancy. In this data it was reported 64% as bed occupancy but the % sign was not printed as a typo error so that presumed it at 64 nos. hence they recorded average bed occupancy as 21% which factually is 64% (attach here is the copy of the sheet taken by assessors) which is per the norms of MCI.	4 & 5
7.	There were NIL major and minor operations on the day of assessment.	All the 6 OT's Installed are class 100 modular type state of the art Operation Theaters, which needs mandatory maintenance as specified under annual maintenance contract with the vendors which is mandatory necessity to maintain the qualitative sensitivity of such sophisticated medical equipment. Thus, OT Complex was under periodical Maintenance in that week, hence hospital was not doing any surgeries in that particular week. As of today we are operating 5-6 major and 7-8 minor surgeries daily. (refer annexure 5)	5
8.	There were Nil normal deliveries and cesarean sections on the day of insp.	Govt. of India is running a scheme called "Janani Suraksha Yojna" where in apart of free delivery charges and medicines every patient undergoing delivery is paid as solesism. These facilities are available at all primary health	

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		centers where they have kept ambulances dedicated to this scheme for transporting patients to and fro free of cost. Our hospital is surrounded by no. of PHC's due to which although patients do come to us in OPD's but they get their deliveries conducted at Govt. PHC's which result in lesser no. of delivers cases in the hospital. We have applied to health department of the State for empanelment under various schemes, which is the final stages, once this empanelment is complete deliveries will start in good nos. at our hospital also.	
9.	Radiological and Laboratory load is grossly inadequate.	Because as the OT complex was under periodical Maintenance surgeries were not being done, hence the load was reduced in that particular week. Radiological and Laboratory work data attached with point No.6 also reflects that they are as per the norms of MCI.	5
10.	MRD is Manual	OPD registration is Computerized, rest is Manual.	
11.	Casualty: Separate Casualty for Obs & Gynae is not available.	It is available, infact Only 10 Beds are required as per the MCI norms for Casualty whereas 25 beds are available , with 5 beds dedicated for obs & Gynae.	
12.	OT's five major OT's are available but non functional 2 Minor OT are Non functional	6 major modular type class 100 OT's equipped with Dragger Anesthesia Work stations, and dragger LED OT lights with hepa filter, laminar airflow, antibacterial and antistatic floor are available and functional at the hospital. 2 minor OT's are also funcational. However, on the day of assessment assessors found that well equipped OT's available but were not functional on that very day which was due to periodical maintenance.	
13.	ICU's : There were NIL patients on the day of insp.	On the day of assessment some patients who were medically stable were shifted to general ward. But the next day 4 patients were admitted. As of now average bed occupancy in ICU's is 8-10 patients per day.	5
14.	CSSD: Separate points for receiving and distribution are not available. Bowl stylizer is not available. NIL bins,	Separate points are available. Since, OT's were under Maintenance load was reduced, hence sterilization was done in the emergency OT's sterilization room. Now CSSD is fully functional with adequate load.	

	trays were sterilized.		
15.	College Council : details of its constitution and meeting are not provided	College Council is constituted as per the norms, and this fact was specifically informed to the assessors and the list was handed over to them. List is attached herewith.	6
16.	Lecture Theatres : Only Spece is Available, they are not furnished, audio visual aids not available	All furniture was available in the campus, it was also shown to assessors that for safety purposes it was stacked in store of college building. It was placed in the lecture halls immediately and the same was inspected by the assessor on the second day morning i.e. 21/8/2015. Complete furnishing along with audio, visual aids is available as per MCI norms.	
17.	Central Library: not air conditioned, students reading (outside) not available, journals not available and internet nodes not available.	Library is Air Conditioned, separate Reading rooms are also available, Journals are available and were subscribed long back on 18th April 2015 (copy enclosed) Internet nodes are also made available.	7
18.	Common Rooms: only space available, not furnished	Furniture was kept in the store and common rooms were furnished and shown to assessors on 21/8/2015. They are completely furnished as required.	
19.	Central Photography section not available.	Central Photography room is available; equipment was kept in the store. They have been placed as required.	
20.	Students Hostel's Not furnished, mess not available toilet facilities not functional.	Hostels are available. Mattress and pillows are also available but were not placed for hygiene purposes. It will be placed before students occupy the hostel. Toilets are available and functional, mess is available, furniture was kept in store, it is placed as per norms.	
21.	Residents Hostel: 40 available against 46, not furnished, mess not available.	40 were required as per old norms, new norms have come into force after 3 rd July, 2015, now 46 accommodations are made available. Mess is provided however, it is not functional as of now and hospital mess is used by the residents doctors for the time being. Mess will be made functional within 30 days.	

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22.	Nurses Hostel: not furnished	Nurses Accommodation is available; furniture is placed as required.	
23.	Residential Quarters: not available	Quarters for teaching faculty are near completion, they have been provided alternate arrangements for the time being at Sukh Sagar Valley, Jabalpur.	
24.	Recreational facilities not available.	Recreational facilities are available, once the permission is granted it will be made functional.	
25.	OPD: Minor OT is not available, Immunization clinic in pediatrics OPD was locked on the day of assessment.	Minor OT is operational in surgery OPD block, and immunization material is available. At the time of assessment immunization clinic was locked for safety purposes because incharge of clinic has gone to collect immunization material from central Pharmacy.	
26.	There is no equipment in audiometry room. It is non-functional.	Equipment is portable type available with us and is kept with Audiologist in his personal custody for safety purposes.	
27.	Wards: Pantry is not available.	Pantry is available in all wards.	
28.	Central Laundry : Not Available	Laundry building is complete and for time being it is Manual and outsourced.	
29.	Central Kitchen : Not available.	Central Kitchen is available it is outsourced.	
30.	Nursing Staff : 84 available against the requirement of 175.	Complete nursing staff as per norms is available which are divided in three shifts. As the time of insp 84 on duty were available. List of 186 is enclosed for reference.	8 & 2
31.	Paramedical Staff: 40 available against 100	Complete Paramedical staff as per norms is available which are divided in three shifts. At the time of insp 40 on duty were available. List of 107 is enclosed for reference.	8 & 2
32.	Website information is sketchy	Remarks are general in nature.	
33.	Anatomy Department: Dissection tables available are less	Tables are available as per norms, which were kept in store, which were placed in the department and were inspected by the assessor on second day morning i.e. 21/8/2015.	

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	than required. Lockers not available	Lockers are now made available.		
34.	Videographer was not made available till 5:00 PM	As the videographer was not insisted upon by the assessor, the same was not made available.		
35.	Other deficiencies as pointed in the detail report.			

8. The gist of the explanation can be discerned from this tabular chart which refers to the material available with the inspection team of Medical Council, and on which basis, the negative report was submitted by it to the Central Government.

9. Reverting to the manner in which the respondent No.1 has disposed of the proposal on this occasion, can be discerned from the reasons recorded in paragraph-8 of the impugned order. The first reason, which weighed with the Central Government, is, that the Scheme has been disapproved by the Competent Authority and has been conveyed to the Trust by following due procedure and within the prescribed time. This opinion, to say the least, is not in consonance with the observations made in the previous two decisions of this Court. In the previous judgments, the Court had occasion to consider the legal issues and more particularly about the scope of authority of the Medical Council of India as also the Central

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Government. In those decisions, reference has been made to the relevant provisions and the decisions of the Supreme Court which predicate that the Central Government is the final Authority and must arrive at its own satisfaction before accepting or not accepting the recommendation of the Medical Council of India. For that, the Central Government must not only advert to the recommendation made by the Medical Council of India, but the material accompanying thereto and for the same reason, the explanation offered by the institution, which relies on the same material, already submitted by the inspecting team along with the recommendation to the Central Government. In the earlier decision, it has also been noticed that if new material is brought to the notice of the Central Government, which obviously would be after the inspection is completed by the Medical Council of India, may also have to be considered by the Central Government. This is the settled legal position. Thus, it is the duty of the Central Government to examine all the issues and material placed at its disposal and to deal with the same objectively and record its own satisfaction, pointwise, if multiple deficiencies are pointed out by the Medical Council of India, in the context of the explanation offered by the College/Trust in that behalf.

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10. In the earlier round of writ petition, it has also been found, as of fact, that the order was passed by the Central Government without giving opportunity of hearing to the petitioner-Trust. It would, therefore, not be appropriate to say that due procedure was already complied with in all respects as noted in clause (i) of paragraph-8 of the impugned judgment. In the previous judgments, we have also noted that the Medical Council of India before submitting its adverse recommendation, should have given opportunity to the petitioner-Trust to offer explanation including to rectify atleast those deficiencies noticed by it during the inspection which were remediable. That is the mandate of the relevant provisions. Even Form No.4 obligates the M.C.I. to mention this fact whilst sending its recommendation to the Central Government. In the present case, this procedure has not been followed. The impugned decision also reinforces the fact that the Authority has erroneously mixed up the issue of procedural compliance with the argument of the petitioner that it was a case of deemed approval – as no final decision was taken by the Central Government within the statutory period from the date of submitting proposal. The two are completely independent. Rather, we find that there is absolutely no discussion, muchless, reference to the material facts to

constitute a case of deemed approval, as were pressed into service. Thus understood, we are persuaded to take the view that the conclusion reached by the Secretary, in the impugned order, that proper procedure has been followed, is, manifestly wrong and error apparent on the face of the record.

11. The respondent No.1 has then proceeded to deal with the deficiencies noticed by the Medical Council of India and the submission of the College and has in effect observed that it is not open to the College to contend to the contrary from what has been accepted by the Dean of the College. That assumption has been reached on the basis of the signature of the Dean appended on Standard Assessment Form. The fact that such signature has been appended on Standard Assessment Form (SAF) during the inspection, does not preclude the Trust/College from questioning the correctness of the contents of those documents before the Central Government on the basis of the material relied and compiled by the MCI in its negative recommendation; and moreso, denude the Central Government from considering the explanation pointwise, as offered by the Trust. The signature of the Dean cannot be the sole basis to overlook the factual position, which emanates from the other material placed on record by the

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Medical Council of India along with its negative recommendation sent to the Central Government. The Central Government, being the final Authority, must undertake thorough scrutiny of all the documents and especially of those documents which are part of the record of the report submitted by the Medical Council of India and also relied by the petitioner-Trust in support of its explanation. This, once again, has not been done by the respondent No.1, on this occasion also. The approach of the Central Government, to say the least, is found to be very mechanical if not casual. The impugned decision is not only cryptic but also reinforces the confused approach of the Central Government. Further, inspite of express directions given by this Court, we find no pointwise reasoning to reject the pointwise explanation offered by the petitioner-Trust. We find that the petitioner is justified in contending that all relevant matters have not been analysed by the Central Government which it ought to have, because of the statutory obligation and also because of clear directions given by this Court in that regard. This is nothing short of abdication of authority and failure to discharge statutory duty.

12. In clause (iii) of paragraph-8 of the impugned order, the Secretary, Ministry of Health and Family Welfare,

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Govt. of India, proceeds to note that the documentary proof submitted by the Trust are non-conclusive. We fail to understand as to how the Authority could engage in double standard approach in respect of the same documents. Inasmuch as, the petitioner-Trust, as aforesaid, was relying on the documents which were already part of the record of the inspecting team of the Medical Council of India. If the Medical Council of India has already taken note of those documents and are made the basis of the report, there is no just reason forthcoming as to why the same must be treated as non-conclusive. Further, if the Central Government was not satisfied with the factual position or had some confusion or doubt, it was always open to the Central Government to get the factual position verified, but should not have taken such hyper-technical approach to outright discard the documents relied by the petitioner, as has been done in the present case. This approach has also caused serious miscarriage of justice.

13. We may place on record that intervention application has been filed in this petition by the same party who had filed intervention application on the earlier occasion, in W.P. No.7915/2015. For the reasons mentioned in paragraph-18 of the decision on the said writ petition, the intervention application is **disposed of** on the same terms.

14. We place on record that the counsel for the petitioner vehemently persuaded us to take the view that the High Court itself, atleast on this occasion, must examine all aspects of the matter referred to in the negative report submitted by the Medical Council of India, which, in the opinion of the petitioner-Trust were founded on non-existing grounds and manifestly wrong. This argument was canvassed even on the earlier occasion. For the reasons recorded in the previous decision of this Court dated 30th September, 2015, *inter alia*, in paragraph-16 thereof, we would still insist that the Central Government itself must decide all issues on its own merits and take a final decision afresh, pointwise – as has been directed in the earlier round of writ petition.

15. We, therefore, **set aside** the impugned decision of the Central Government Annexure P-19 dated 7th October, 2015 and once again relegate the petitioner-Trust before the Central Government for reconsideration of the proposal afresh in the light of the observations made in the previous two decisions and the settled legal position and to record opinion/reasons point-wise, as has been directed in the order dated 30th September, 2015 in paragraph-10, which has been allowed to become final by the Central Government and is, therefore, binding in all respects.

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16. As was done on the earlier occasion, the petitioner would waive the requirement of notice of hearing before the Central Government and instead, the representative of the petitioner-Trust would appear in the office of the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi **tomorrow (17.10.2015) at 11:00 A.M.**, for personal hearing and to offer explanation on the basis of documents already placed before the said Authority.

17. The Secretary may consider the matter immediately or as per his convenience thereafter, but ensure that the final decision is taken not later than **2:00 P.M. on 20th October, 2015** and if it is adverse, must be communicated to the petitioner before that date and time - so that the petitioner may consider of taking recourse to further remedy, as may be advised.

18. For the time being, we are not finally disposing of this petition but would keep it pending for reporting compliance by the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi, to be tendered before this Court on **20th October, 2015 at 2:30 P.M.**

19. This order, however, **disposes of** prayer clause 7(i)

only.

20. For consideration of prayer clauses 7(ii) to 7(iv), list the matter on **20th October, 2015 at 2:30 P.M.**

C.C. today.

(A.M. Khanwilkar)
Chief Justice

(K.K. Trivedi)
Judge

psm