

HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P. No.7521 of 2015

RKDF Medical College Hospital
and Research Centre

.....Petitioner

Versus

Union of India and another

....Respondents

=====
Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice K.K.Trivedi, J.

Whether approved for reporting : Yes
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Shri Nidhesh Gupta, Senior Advocate with Shri Amalpushp
Shroti, Advocate for the petitioners.

Shri Vikram Singh, Advocate for the Union of India.

Smt. Indira Nair, Senior Advocate with Shri Rajas Pohankar,
Advocate for the Medical Council of India.

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Reserved On : 23.06.2015

Date of Decision : 01.07.2015

ORDER

{ 1st July, 2015 }

Per: A.M. Khanwilkar, Chief Justice:

This writ petition filed on 15.05.2015, under Article 226 of
the Constitution of India, essentially, takes exception to the

decision of the Medical Council of India (hereinafter referred to as MCI) - Respondent No.2 dated 29.4.2015 (Annexure P-12) and communication dated 11.5.2015 (Annexure P-14). Direction is also sought against the Respondent No.1 to grant renewal permission to the petitioner for the academic year 2015-16 for admission to the 2nd batch of 150 students in the petitioner medical college. Further relief is claimed against the Respondent No.2 to reconsider the application of the petitioner for renewal of permission for academic year 2015-16 in furtherance of the order passed by the Respondent No.1 on 17.4.2015 (Annexure P-11).

2. The petitioner was granted permission to establish new medical college - RKDF Medical College and Research Centre at Bhopal for MBBS course with an annual intake of 150 seats for the academic year 2014-15 under Section 10A of the Indian Medical Council Act, 1956. That permission was granted on 9.7.2014. The first batch has already commenced the MBBS course successfully. Accordingly, the petitioner applied for grant of renewal permission for the 2nd batch of MBBS course for the academic year 2015-16, within the prescribed time. According to the petitioner, that application was processed by the Respondent No.2 and negative recommendation was sent on 5.3.3015 to Respondent No.1,

without giving opportunity whatsoever, much less sufficient time to the petitioner to rectify the deficiencies, if any. The said communication was sent by the Respondent No.2 on the basis of minutes of the meeting of its Executive Committee held on 2.3.2015. The Executive Committee, relying on the adverse observations made in the Council Assessor Report, decided not to consider the petitioner institution for renewal of permission for two academic years i.e. academic year 2015-16 and next academic year 2016-17. The relevant extract of minutes of the meeting of Executive Committee dated 2.3.2015, reads thus :-

“Dr. V. N. Jindal recused himself from the meeting.

54. Assessment of the physical and other teaching facilities available for renewal of permission for MBBS course for 2nd batch (150 seats) of RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh earlier under Barakatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act, 1956 for the academic year 2015-2016.

Read the matter with regard to Assessment of the physical and other teaching facilities available for renewal of permission for MBBS course for 2nd batch (150 seats) of RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh earlier under Barkatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act 1956 for the academic year 2015-2016.

The Executive Committee considered the Council Assessor report (23rd & 24th February 2015) and noted the following :-

1. Deficiency of teaching faculty is 19.81 % as detailed in the report.
2. Shortage of residents is 49 % as detailed in the report.
3. Bed occupancy is 48 % on day of assessment.
4. There were only 5 Major (which included 4 Cataract operations) & 4 Minor operations on day of assessment.
5. There was no normal delivery & 1 Caesarean section on day of assessment.
6. There was no patient in ICCU, SICU, PICU/NICU & only 1 patient in MICU on day of assessment.
7. With regard to clinical material, the following discrepancies were observed:
 - (a) In Casualty OPD, two fake patients of corneal abrasion were shown. On enquiry, both of them said that on their left eye was given

eye pads just one hour before. On examination, both of them had no such problem.

(b) In Paediatrics ward, most of the patients had no significant illness to be treated as IPD patients. 5 patients from the same family were found in Paediatrics ward. Few other patients were also from the common family.

(c) In Obstetrics ward, 2 patients were aged more than 50 years – i.e. beyond reproductive age.

(d) In Tb & Chest ward, almost all the patients shown were not having any chest complaint at all. Rather, they had other vague complaints like body ache, etc. not requiring admission.

(e) Overall, IPD patients were not having significant illness to be treated as IPD patients.

(f) Most of IPD patients were not investigated at all. Most of them were not given any medicine.

(g) More than 70 % patients were admitted on only 1 day – i.e. 22/02/2015.

8. With regard to faculty & Residents, the following discrepancies are observed:

(a) Most of the Residents are not actually staying in campus accommodation.

(b) One Junior Resident in O.G. confessed that he is actually staying in teaching staff quarters but only on paper he was allotted a room in the hostel.

(c) A few teachers are engaged only periodically as per their teaching schedule.

(d) Most of the faculty are not actually staying in the quarters allotted to them.

(e) Significant number of faculty & Residents were unaware of other faculty & Residents of their own departments.

9. Dr. Navneet Mishra, Asst. Prof. of General Surgery had attached wrong experience certificate.

10. The following faculty were observed not to have done any work in the department:

(a) Dr. Sameer Zutshi, Asst. Professor, Anesthesia;

(b) Dr. Subrat Adhikary, Asst. Professor of General Medicine;

(c) Dr. Priya Singh, Asst. Prof. of General Surgery;

(d) Dr. Avinash Kaundinya, Professor of Ophthalmology.

11. In case of as many as 12 faculty, address does not match with Dean's quarters allocation certificate.

12. In case of 14 Residents as detailed in the report, there is no signature of HOD on D.F.

13. Dr. Milan Pumbhadiya, Junior Resident had D.F. filled on 09/01/2015 while he was appointed on 20/01/2015.

14. In case of Dr. Jayesh Dholakiya, Junior Resident in General Medicine, date of joining is contradictory.

15. Name of faculty was not mentioned in weekly teaching programmes.

16. In Residents' hostel, ground floor is used as Autopsy block.

17. Teaching staff quarters are not actually staff quarters but like big sized rooms hostel. They are located on 2nd & 3rd floor above the library and reading room, which means that library is on ground floor, reading room is on I floor of teaching quarters hostel.

18. MRD: It is partly manual & partly computerized.

19. Nursing staff: 155 Nurses are available against requirement of 175 as per Regulations.

20. Paramedical staff: Only 65 are available against requirement of 100 as per Regulations.
21. Anatomy department: Embryology models are inadequate.
22. Access of RKDF Hospital is through very narrow road passing through slum area which is a major problem for ambulance to reach.
23. No separate Nursing hostel is available. I floor of Girls' hostel is utilized as Nursing hostel.
24. Other deficiencies as pointed out in the inspection report.

In view of the above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 2nd batch (150 seats) of RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh earlier under Barkatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act, 1956 for the academic year 2015-2016. It was further decided to apply clauses 8(3)(1)(a)& 8(3)(1)(d) of Establishment of Medical College Regulation (Amendment), 2010 (Part II), dated 16th April, 2010 which read as under:-

“8(3)(1)¹

In view of above, it was decided not to consider the institute for renewal of permission for two academic years i.e. that academic year (i.e. 2015-16) and the next academic year (i.e. 2016-2017.)

The Executive Committee further decided to refer the matter to the Ethics Committee. ”

3. The Respondent No.2/MCI vide communication dated 25.3.2015 (Annexure P-7), called upon the Dean/Principal of the petitioner college to appear before the Ethics Committee, in the meeting scheduled to be held on 6.4.2015 in the Council Office along with documents mentioned in the said communication.

4. On the basis of recommendation sent by the Respondent No.2, the Under Secretary of Respondent No.1 vide communication dated 31.3.2015, called upon the Dean/Principal of the petitioner college to remain present for the hearing before the Committee constituted for consideration of the proposal, in the meeting scheduled on 10.4.2015, failing which ex-parte decision

¹ [Reproduced in paragraph No.23 at page 35]

may be taken against the petitioner college. According to the petitioner, the petitioner participated in the said hearing and pointed out the errors committed by the Respondent No.2 in forwarding its negative recommendation including that the petitioner was not afforded opportunity whatsoever much less to rectify the deficiencies noted in the Council Assessor Report and about the incorrect observations therein and that the recommendation of Respondent No.2 was not in Form No.4, which was mandatory requirement. The detail statement in support of the clarification and explanation was also submitted before the said Committee indicating pointwise compliance. After considering the said explanation-cum-compliance statement, the Respondent No.1 decided to refer back the matter to MCI for review/assess vide communication dated 17.4.2015. The name of the petitioner is mentioned at Serial No.23. The said communication reads thus:-

“No.U-12012/1057/2015-ME (P-II) (Part.I)
Government of India
Ministry of Health & Family Welfare
(ME P-II Section)

Nirman Bhawan, New Delhi-11
Date 17th April, 2015

To,

The Secretary,
Medical Council of India,
Pocket – 14, Sector – 8,
Dwarka, New Delhi – 75

Subject : Establishment of New medical College/Increase of

MBBS seats/Permission for Renewal of MBBS course at existing Medical Colleges for the academic year 2015-16. Hearing granted to applicant/Medical Colleges where MCI has recommended for disapproval of schemes-reg.

Madam,

I am directed to refer to the subject noted above and to say that as per the proviso under Section 10(A)(4) of IMC Act, 1956, a committee has been constituted for granting opportunity of personal hearing the Ministry in case of disapproval/non-renewal recommendations of the Council in case of UG courses for the year 2015-16. The Committee has given personal hearing to the authorized representatives of the Medical colleges/applicants on 09th and 10th April, 2015. Based on the compliance submitted by the colleges concerned in support of their claim, the Committee has recommended that the case may be referred back to MCI for review/assessment with their respective recommendations in respect of the following schemes. The compliance report submitted by the colleges concerned in original alongwith recommendation of the committee and its observation are also sent herewith as per detail given below:

SL	College/Proposer	Observation of the Committee
1 to 22	-----	-----
23	<u>RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh [Renewal of Permission]</u>	<u>Recommended for review by MCI</u>
24 to 36	-----	-----

2. In view of above, MCI is requested to review/assess the schemes as per the specific recommendations of the hearing Committee and compliance documents submitted by the colleges/applicants and furnish its recommendations accordingly to this Ministry immediately.

Yours faithfully,

Sd/

(Sudhir Kumar)

Under Secretary to the Govt. of India

Telefax No.011-23062959”

(emphasis supplied)

5. The Executive Committee of Respondent No.2, however, in its meeting held on 29.4.2015; and without reference to the spirit of the said communication of Respondent No.1 dated 17.4.2015 and the material sent therewith, proceeded to mechanically reiterate its opinion given on the earlier occasion on 2.3.2015, mainly relying on the legal opinion. In conclusion, the Executive Committee of Respondent No.2 noted that on the basis of opinion of Additional Solicitor General of India application under Section 8 (3) (1) (a) and 8 (3) (1) (d), it has decided to reiterate the earlier decision to recommend to the Central Government not to renew the permission for admission of 2nd batch (150 seats) qua the petitioner college earlier under Barkatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act, 1956 for the academic year 2015-16 and for 2016-17 also. On the basis of the said decision, Section Officer of the Respondent No.2 Council wrote to Respondent No.1 vide letter dated 11.5.2015 and informed accordingly. The said communication reads thus :-

“No.MCI-34(41)(R-47)/2014-Med./106541 dt.11/5/2015

The Secretary,
Govt. of India,
Ministry of Health and Family Welfare,
Nirman Bhawan,

New Delhi -110011

Sub : Renewal of permission for MBBS course for 2nd batch (150 seats) of RKDF Medical College Hospital & Research Centre Bhopal, Madhya Pradesh earlier under Barkatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act, 1956 for the academic year 2015-2016.

Sir,

Please refer to your letter No.U12012/1057/2015-ME (P-11) (Part-I) dated 17/04/2015, on the subject noted above.

I am directed to inform you that the matter with regard to grant of renewal of permission for MBBS course for 2nd batch (150 seats) of RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh earlier under Barkatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act, 1956 for the academic year 2015-2016 was re-considered by the Executive Committee of the Council at its meeting held on 29/04/2015 and it was decided as under :-

“The Executive Committee of the Council observed that at its meeting dt. 02/03/2015, the Executive Committee had decided as under :

.....²

The Committee further observed that the Central Govt. vide its communication dt. 17.04.2015 has requested the Council to review/assess the scheme in the light of the documents submitted by the college/applicants in compliance and recommendations of the Committee with the request to take necessary action(s) for review and furnish its recommendations accordingly to the Ministry.

The Executive Committee of the Council perused the legal opinion of the Ld. Addl. Solicitor General of India and decided to accept it, which reads as under:-

Legal opinion dated 14/03/2015

“The querist MCI as sought my opinion on the interpretation of Regulation 8(3)(1)(a), 8(3)(1)(b) and 8(3)(1)(c) of the Establishment of Medical College Regulations, 1999 . My opinion has been sought on the following issues:-

“1. Whether the Council should process the applications of the medical college for renewal of permission for admitting fresh batch of MBBS students for the academic session 2015-16 wherein the Council has invoked Regulations 8(3)(1)(a), 8(3)(1)(b) and 8(3)(1)(c) of Establishment of Medical College Regulation, 1999.

2. Whether the Council while applying Regulation 8(3)(1)(b) of

² [Reproduced in Para 2 at page 3]

Establishment of Medical College Regulation, 1999 can deny recognition of the MBBS degree granted by medical colleges for the students who have already completed their MBBS course or whether the same will be applicable while considering the case of a medical college for grant of renewal of permission for 5th batch of MBBS students.”

I have gone through the Note for Opinion forwarded by the querist and have also discussed the matter for the querist.

The amendment notification dated 16.04.2010 inserting Clause 8(3)1 made it amply clear that the Central Govt. may at any stage convey the deficiencies found during the inspection of the applicant – medical college and provide them an opportunity to rectify the same. However, in case of renewal of permission at different stages, in case the deficiencies with regard to teaching faculty and bed occupancy are found in the medical college above the percentage provided in Regulation 8(3)1(a), 8(3)(1)(b) and 8(3)(1)(c) respectively of the Establishment of Medical College Regulation, 1999, the application of the medical colleges cannot be processed further since, considering the fundamental nature of the deficiencies in clause 8 the rectification is not statutorily contemplated. In such cases there is no provision to grant any time to the medical college for rectification of the deficiencies as the same cannot be rectified within a short span of time.

The relevant portion of the above Regulation are reproduced as under:-

“
(3)(1)³

I am informed that the assessment of MCI is carried out by the assessors who are Professors of eminence and high integrity belonging to various Govt. Medical Colleges of the Country and the assessment report is also acknowledged by the Dean/Principal of the concerned medical college. The truthfulness and veracity of the contents of the report which incorporates factual findings, therefore, cannot be doubted, since, it is done by independent persons in the presence of the Dean/Principal of the concerned medical college. The medical college is statutorily required to maintain minimum academic standards for the benefits of the medical education and the students so as to ensure that the MBBS students get best of teaching and training. The above Regulations are required to be and were notified with the prior approval of the Central Govt. to ensure that each medical college maintains atleast a minimum teaching faculty, infrastructure, clinical material and other physical facilities in their medical colleges.

The Regulations framed by the querist are statutory in nature and hence the Council as well as the Central Govt. is bound to follow the same in letter and spirit.

³[Reproduced in paragraph No.23 at page 35]

I am of the considered opinion that in cases of the medical colleges wherein the Council has invoked Regulation 8(3)(1)(a), 8(3)(1)(b) and 8(1)(c) of the Establishment of Medical College Regulation, 1999, after an inspection by the MCI assessors, there is no statutory provision either under the Acts or under the Regulations authorizing the querist to process the same further.

As far as the second question is concerned, I am of the opinion that the applicability of Regulation 8(3)(1)(b) of the Establishment of Medical College Regulation, 1999 while considering the case of a medical college for grant of recognition of MBBS degree will directly affect the MBBS students who have already completed their MBBS course/studies. The language in Regulation 8(3)(1)(b) of the Establishment of Medical College Regulations, 1999, clearly provides that in case the institute fails to provide minimum teaching faculty and bed occupancy, the institute shall not be considered for renewal of permission. The statutory scheme does not however bar an institute to be considered for the purpose of recognition of MBBS degree of the students who have successfully completed the course. Any such action on part of the querist will be too harsh on such students who have already completed their studies and had/have no control over either the college, the querist or the Central Govt.....”

Legal opinion dated 27/03/2015

“1. The querist – Medical Council of India has sought my opinion as to whether the querist is obliged to consider the case of a medical college for grant of renewal of permission, which has been barred under Regulation 8(3)(1)(d) of the Establishment of Medical College Regulation, 1999, for two academic years on account of submitting false and fabricated documents / declaration forms of the faculty employed in the medical college. The opinion is sought based upon the facts of one particular case viz. case of **Malla Reddy Medical College**.

2. I have gone through the Note for Opinion forwarded by the querist and have also discussed the matter in detail for the querist. My opinion on the questions is as under :-

3. As can be seen from the Note for Opinion and the correspondence, Malla Reddy Medical College has been debarred for making admission of 150 MBBS students under Regulation 8(3)(1)(d) of the Establishment of Medical College Regulation, 1999, initially for the academic year 2014-15 & 2015-16 and now for the academic session 2015-16 & 2016-17.

4. In order to give a specific opinion in the matter in light of facts of the case, it is appropriate to consider Regulation 8(3)(d) of the Establishment of Medical College Regulation, 1999 along with the facts of the case. The relevant portion of the aforesaid Regulation is reproduced as under :-

“

8. GRANT OF PERMISSION:

.....

.....

(3)(1) (d)⁴

5. Regulation 8(3)(1)(d) of the Establishment of Medical College Regulation, 1999, for a salutary provision to achieve the object of the Act providing that in case any medical colleges is found to have employed teachers with fake and forged documents and declaration forms, such an institute will not be considered for renewal of permission/recognition for award of MBBS degree / processing of their application for postgraduate courses, for two academic years i.e. the current academic year and the next academic year. This provision is apparently made to ensure that no medical college takes chance by resorting to forgery or use of fake documents.

6. The Regulation 8(3)(1)(d) was incorporated in order to work as a deterrent for a medical college from including in any malpractice in relation to the appointment of teaching faculty in a medical college as the same will affect the quality of teaching and training in any such institution and would ultimately defeat the very object of the Act.

7. In the case of Malla Reddy Medical College, the querist on its regular inspection found that the teaching faculty employed by the medical college as well as the declaration form submitted to the querist was forged / fabricated in order to get a favourable recommendation for admitting a fresh batch of students for academic year 2014-15.

8. When the above malpractice came to the notice of the querist, the querist conducted a detailed enquiry and also verified the experience certificate as well as the declaration form furnished by the **Malla Reddy Medical College**. The querist also verified the experience cum relieving certificate of the faculty members from their earlier employer and found it to be false and fabricated.

9. The querist, after considering the entire material in this regard, vide its letter dated 03.09.2014 communicated its decision to refer to the matter of the Ethics Committee of the querist for appropriate action against the concerned doctors for submitting false and fabricated documents / declaration form as well as to debar **Malla Reddy Medical College** from admitting fresh batch of MBBS students for two academic years i.e.2014-15 and 2015-16 in terms of Regulation 8(3)(1)(d) of the Establishment of Medical College Regulation, 1999.

10. Since the decision of the querist was not communicated to the medical college, the institution made admissions for the academic year 2014-15 in pursuance of the order dated 18.09.2014 and 25.09.2014 passed by the Hon'ble Supreme Court in the case of Hind Charitable

⁴ [Reproduced in paragraph No.23 at page 35]

Trust Vs. Union of India- W.P. (CO) No.269 of 2014.

11. Thereafter, in pursuance to the Central Govt. letter dated 05.01.2014, the querist reconsidered its decision on the ground that **Malla Reddy Medical College** has already made admission for the academic year 2014-15, the querist decided that in the case of Malla Reddy Medical College the current academic year shall mean to be 2015-2016 and the next academic year will be 2016-17. This was communicated to the Central Govt. vide letter dated 21.01.2015.

12. Indulging in malpractice of forgery and fabrication is a serious offence in law and the same cannot be taken lightly. Especially in the case of medical education, as the same will affect the quality of medical education provided by an institution. The institution which indulges in forgery and fabrication should be penalized as contemplated by statutory provisions as their actions affect the career of students pursuing MBBS education and may eventually affect the citizens.

13. In view of the clear reading of the Regulation 8(3)(1)(d) and the facts of the case, I am of the opinion that querist is not obliged to process the application of a medical college for renewal of permission which has been debarred from making admission for two academic years in conformity with Regulation 8(3)(1)(d) of aforesaid Regulation .”

In view of above and the opinions of the Ld. Additional Solicitor General of India application of Section 8(3)(1)(a) and 8(3)(1)(d), the Executive Committee of the Council decided to reiterate earlier decision to recommend to the Central Govt. not to renew the permission for admission of 2nd batch (150 seats) of RKDF Medical College Hospital & Research Centre, Bhopal, Madhya Pradesh earlier under Barkatullah University and now under Sarvepalli Radhakrishnan University, Bhopal u/s 10A of the IMC Act, 1956 for the academic year 2015-2016 and for 2016-17 also.”

Yours faithfully,

Sd/-
(S.Savitha)
Section Officer.”

(emphasis supplied)

6. In this backdrop, the petitioner had no other option but to approach this Court praying for setting aside the decision of the Executive Committee of Respondent No.2 dated 29.4.2015

(Annexure P-12) and also the communication dated 11.5.2015 (Annexure P-14) and to direct the Respondent No.1 to grant renewal permission to the petitioner for the academic year 2015-16. The petitioner, in the first place, submits that the Central Government should have independently applied its mind on the claim submitted by the petitioner and approved or disapproved the same without sending it back to the Respondent No.2 for review or reconsideration. In that, the Central Government is the final Authority and the Respondent No.2 is only a recommendatory body. In any case, the Respondent No.2 was obliged to review the case of the petitioner college after giving opportunity of hearing to the petitioner in which the petitioner could have demonstrated that the deficiencies noted in the Council Assessor Report were inappropriate and in any case, to give opportunity to the petitioner to rectify the same, if any. Further, the Respondent No.2 should have reconsidered the matter in the light of observation made by the Central Government in its communication dated 17.4.2015 and the document sent therewith which were submitted by the petitioner by way of explanation and statement of compliance. According to the petitioner, the parameter applied by the Respondent No.2 to determine the deficiencies in the petitioner

college such as – bed occupancy or shortage of residents “on the given day of assessment” is not only a hyper technical approach but results in applying absurd logic. Instead, the average number of residents and bed occupancy during the relevant year (period) ought to have been reckoned, for assessing the compliance of standards in the petitioner college. Similarly, the explanation offered for the shortage or deficiencies in that behalf “on the day of assessment” should have been considered by the Authorities objectively. Further, the explanation about the experience certificate of Mr. Navneet Mishra should have been considered on its own merits and in any case appointment of one Professor who had attached wrong experience certificate, by no stretch of imagination by itself can be the basis to deny renewal permission to the entire college when substantial compliance of all other requirements for maintaining high standards were fulfilled. According to the petitioner, the Respondent No.2 as well as Respondent No.1 have not taken into account all the relevant factors. That has not only jeopardised the college but the interests and prospects of several aspirants (atleast 150 students) who could get admission in the petitioner college. According to the petitioner, it is a classic case of non-application of mind, if not of abdication

of power, both by Respondent No.1 in remitting the scheme to MCI as also by the Respondent No.2 of dealing with the issue mechanically and not objectively, keeping in mind the larger public interest.

7. The petitioner in support of its argument about the procedure that ought to be followed for considering the scheme submitted for renewal of permission has placed reliance on the decision of the Supreme Court in the cases of **Swami Devi Dayal Hospital and Dental College Vs. Union of India and others**⁵ and **Priyadarshini Dental College and Hospital Vs. Union of India and others**⁶. Reliance is also placed on the recent decision of the Supreme Court in the case of **Royal Medical Trust (Regd.) Vs. Union of India and another**⁷ to contend that irregularity or illegality committed by the Authorities for processing the scheme on time, should not come in the way of the petitioner for issuance of suitable writ or direction against the Authorities. The petitioner wanted to rely on other decisions of the Supreme Court included in the compilation of judgments handed in to the Court during the arguments, but the counsel submitted that if the petitioner was right in its argument that the MCI was obliged to reconsider the

⁵ 2013 (1) SCAL 608

⁶ (2011) 4 SCC 623

⁷ 2013 (12) SCAL 145

scheme afresh in accordance with law by giving opportunity to the petitioner and then to submit its fresh recommendation in Form No.4 - which was not done by the Respondent No.2 even on the earlier occasion, it would not be necessary to multiply those decisions.

8. The Respondent No.1, per contra, contends that the petition as filed has become infructuous in view of the decision of Respondent No.1 communicated to the petitioner vide letter dated 15.6.2015 clearly indicting that the scheme submitted by the petitioner has been rejected consequent to the fresh recommendation made by the Respondent No.2 on 11.5.2015 which was founded on the decision of the Executive Committee of Respondent No.2 dated 29.4.2015. According to Respondent No.1, the last date for sending recommendation to MCI was 15.5.2015; and for the Central Government to issue permission for renewal is 15.6.2015. Thus, no relief can be granted to the petitioner after the said cut off dates. Respondent No.1 further contends that the petitioner was afforded personal hearing on 10.4.2015 and after considering the written and oral submissions made by the representative of the petitioner college, Central Government decided to refer back the scheme to Respondent No.2 MCI for

review/assessment. The Respondent No.2 MCI having reiterated its earlier decision, no further indulgence can be shown to the petitioner; and moreso, in view of the communication dated 15.6.2015 referred to above. It is submitted that the MCI is a body constituted under the provisions of the Indian Medical Council Act, 1956 and is bestowed with the responsibility of maintaining highest standards in medical education throughout the country. If the said body has given negative recommendation, that is normally honoured by the Respondent No.1 for approving or disapproving the scheme. The Respondent No.1 is relying on the decisions of the Supreme Court in the cases of **Mridul Dhar Vs. Union of India**⁸ (Para 33) as also **Priya Gupta Vs. State of Chhattisgarh**⁹.

9. The Respondent No.2 MCI, however, has taken somewhat extreme position. According to Respondent No.2, the Central Government was obliged to either approve or disapprove the scheme itself. No express powers have been conferred on the Central Government to remand the matter back to MCI for reconsideration. The requirement of giving opportunity of hearing applies only in case of consideration of scheme under Section 10A by the Central Government. Further, the power to remit the scheme

⁸ (2005) 2 SCC 65

⁹ (2012) 7 SCC 433

for reconsideration to MCI can be exercised by the Central Government only in respect of proposal for setting up a new medical college and not in respect of renewal scheme. According to Respondent No.2, the Central Government itself should have considered all the issues after the first recommendation was submitted by the MCI, being a case of renewal scheme. It is contended on behalf of Respondent No.2 that Clauses (a) as well as (d) of Regulation 8 (3) (1) were attracted in the present case as could be discerned from the Council Assessor Report and, therefore, no fault can be found with the recommendation of the MCI, be it vide communication dated 5.3.2015 on the basis of the decision taken by the Executive Committee in its meeting dated 2.3.2015 or dated 11.5.2015 on the basis of the decision taken by the Executive Committee in its meeting held on 29.4.2015. The Respondent No.2 submits that the petitioner is not entitled for any relief whatsoever. According to the Respondent No.2, the decision of the Supreme Court in the case of **Swami Devi Dayal Hospital and Dental College** (supra) has no application to the issue on hand, in particular regarding the power of the Central Government to remit the Scheme for reconsideration to MCI. In that, the power under Regulation 8 as amended is only applicable to the scheme

for establishment of new colleges and not for scheme for yearly renewal permission. Any other interpretation of the amended Regulation 8 would be in the teeth of the provisions of Act of 1956, as it does not provide for opportunity of hearing or reconsideration of renewal. According to the Respondent No.2, validity of Regulation 8 has been upheld by the Delhi High Court in the unreported case of **Shree Chhatrapati Shivaji Education Society and another Vs. Union of India and another**¹⁰. It is submitted that MCI is not obliged to provide reasonable opportunity to the person or college concerned, in respect of scheme for yearly renewal except to the extent of difficulties or non-availability of any particulars in the scheme at the first instance. The Respondent No.2 has relied on the decisions of the Supreme Court in the case of **State of Maharashtra Vs. Indian Medical Association and others**¹¹(Para 3 and 4), **Christians Medical Educational Society Vs. Govt of Andhra Pradesh**¹² (Para 10), **Medical Council of India Vs. Madhu Singh and others**¹³ (Para 5, 19, 20, 29, 23), **Secretary Selection Committee MBBS Vs. N Anirudhan and others**¹⁴ (Para 11).

¹⁰ W.P. (C) No.5041/2015 & CM No.9119/2015 decided on 28.5.2015

¹¹ (2002) 1 SCC 589

¹² (1986) 2 SCC 667

¹³ (2002) 7 SCC 258

¹⁴ (2003) 5 SCC 283

10. To complete the record, we may note that this writ petition came up for hearing during vacation on 21.05.2015. The Court after considering the rival submissions granted interim relief in the following terms :-

“Heard on the application for hearing the writ petition during summer vacation. For the reasons stated in the application, same is allowed.

Heard on the question of interim relief.

Learned counsel for the petitioner submits that by an order dated 17.4.2015, the Central Government had directed respondent No.2 to review the case of the petitioner, however, respondent No.2 has refused to review the case of the petitioner on the ground that there is no provision. It is further submitted that the aforesaid order has been passed in ignorance of Regulation No.7

On the other hand, learned counsel for the respondent No.2 has submitted that the last date for submission of the recommendation by Medical Council of India has already expired on 15th May, 2015.

We have considered the submissions made by learned counsel for the parties. From the revised schedule which has been mentioned at page No.202 of the paper-book, we find that the last date of submission of recommendation *prima facie* appears to be 31st May, 2015. In Regulation 7 of the Regulations, we direct respondent No.2 to comply with the directions issued by respondent No.1 as contained in order dated 17th April, 2015. It is made clear that the exercise which may be undertaken by respondent No.2 shall not create any equity in favour of the petitioner and the same shall be subject to result of the writ petition.

As prayed, let the writ petition be listed on 28.5.2015.”

(emphasis supplied)

11. Against this interim order, the respondent No.2 MCI carried the matter in appeal by way of SLP (Civil) No.16454/2015 which was disposed of on 04.06.2015 in the following terms :-

“Heard the learned Additional Solicitor General for the petitioner and the learned senior counsel for the respondent No.1.

This special leave petition has been filed challenging the interim order dated 21.05.2015 passed in writ petition (Civil) No.7521 of 2015 by the High Court of Madhya Pradesh.

By the said interim order, the High Court has directed the present petitioner – Medical Council of India to comply with the letter dated 17.04.2015 issued by the Union of India to review its decision.

Various pleas have been raised before us pointing out the deficiencies found in the inspection by the Medical Council of India. It is also argued that the recommendation cannot be made in violation of Regulation 8 (3) (1) (a) of the Establishment of Medical College Regulations, 1999.

We are of the view that all these pleas can be raised before the High Court where the Writ Petition is still pending.

We are of the opinion that since in the Writ Petition the relief of issuance of a writ in the nature of mandamus directing the Medical Council of India to review the application of the respondent No.1 herein – RKDF Medical College Hospital and Research Centre for renewal of permission for the academic year 2015-16 was sought, as such, the High Court has granted indirectly final relief in the form of interim relief.

In the above circumstances, we dispose of this special leave petition allowing the present petitioner – Medical Council of India to raise the above pleas raised before us, before the High Court by moving an appropriate application/written statement within a period of three days from today. The High Court is requested to decide the same as expeditiously as possible, preferably within a period of ten days from today.”

(emphasis supplied)

12. In this backdrop the matter was notified before this Bench on 22.06.2015 after the Court reopened. It was adjourned to 23.06.2015 at the request of respondent No.2, on which date arguments of both sides were concluded. The counsel for the respondents sought time to file written submissions till 25.06.2015, which request was allowed. Accordingly, written submissions have been filed by the counsel for the respondents Nos. 1 and 2 respectively, whereafter the same have been circulated to us by the Registry.

13. Having gone through the pleadings and the relevant records

as also the oral and written arguments of the parties, the first question that may have to be addressed, as raised by the respondent No.1, is: whether this petition has become infructuous? According to the respondent No.1, during the pendency of this petition communication has been issued by the Under Secretary of Respondent No.1 on 15.06.2015, as a result of which the Scheme submitted by the petitioner for yearly renewal of 2nd batch (150 Seats) of MBBS Course in the petitioner – College for the academic year 2015-16 has been disapproved. The said communication reads thus :-

“No.U.12012/466/2015-ME (P-II)
Government of India
Ministry of Health and Family Welfare
(Department of Health & Family Welfare)

Nirman Bhawan, New Delhi
Dated the 15th June, 2015

The Dean/Principal,
RKDF, Medical College Hospital & Research Centre,
Jatkhedhi, NH-12, Hoshangabad Road, Bhopal,
Bhopal.

Subject : Non-renewal of Central Government permission for admission of 2nd Batch (150 seats) of MBBS Course at RKDF Medical College Hospital & Research Centre Bhopal for the academic year 2015-16 –reg.

I am directed to refer to MCI letter(s) dated 11.05.2015 thereby recommending to the Central Government not to renew the permission for admission of 2nd batch (150 seats) of MBBS course at RKDF Medical College Hospital & Research Centre Bhopal for academic year 2015-16 and to say that the Central Government has decided to accept the recommendations of MCI.

You are therefore directed NOT to admit any students in 2nd batch (150 seats) in MBBS course for the academic year

2015-16. Admission in next batch of students (150 seats) for the year 2016-17 will be made only after obtaining the Central Government Permission.

Any admission made in the regard will be treated as irregular and action will be initiated as per the provisions of IMC Act, 1956 and Regulations made thereunder.

Further, the MCI has also informed to apply Clause 8 (3) (1) (a) & (d) of Establishment of Medical College Regulation (amendment), 2010.

Yours faithfully,

(Sudhir Kumar)

Under Secretary to the Govt. of India
Telefax : 011 -23062861

(emphasis supplied)

14. A bare reading of this communication would indicate that intimation has been given to all concerned about the receipt of negative recommendation of MCI vide letter dated 11.05.2015, on the subject. For that, no student should be admitted in the petitioner College, in the 2nd batch (150 seats) of MBBS course in the academic year 2015-16 or for the next batch of students (150 seats) for the year 2016-17, without obtaining permission of the Central Government. This communication by no stretch of imagination can be read to mean that the recommendation made by the MCI vide letter dated 11.05.2015 has been finally accepted by the Central Government. That can happen only after following procedure specified in Section 10A of the Act, by giving opportunity of hearing to the petitioner in that behalf.

15. Notably, the said letter dated 15.06.2015 merely records that

the Central Government “has decided” (**read contemplating**) to accept the same. For, it does not state that the Central Government, in fact, has accepted the said recommendations of MCI. As aforesaid, that can be done only after giving opportunity to the petitioner in that behalf due to submission of “fresh” recommendation by the MCI consequent to remand. Further, the second recommendation made by MCI dated 11.05.2015, after remand by the Central Government itself is the subject matter of challenge in the present petition. That question is *subjudice* before this Court (because of pendency of this petition since 15.05.2015 and moreso because of the interim order passed on 21.05.2015). If the petitioner were to succeed in this petition, it would necessarily follow that the respondent No.2 – MCI will be obliged to review/assess the Scheme returned by the Central Government afresh. In that, the challenge in this petition is to the decision of the Executive Committee of the respondent No.2 Medical Council of India dated 29.04.2015 (Annexure P-12); and the consequential communication sent by the respondent No.2 to the Central Government dated 11.05.2015 (Annexure P-14). Even if that challenge fails, the petitioner is entitled for an opportunity of hearing under Section 10A and the Regulations framed under the

Act, before the Central Government takes final decision consequent to the submission of the fresh recommendation by the MCI on 11.05.2015. Only when the final decision can be taken or said to have been lawfully taken by the Central Government on the said Scheme. Suffice it to observe that, the preliminary issue raised by the respondent No.1, that the petition has become infructuous is untenable.

16. The next moot question which the petitioner has touched in the grounds of challenge as also raised by the respondent No.2, is that, the Central Government should have decided the Scheme of renewal on its own, on all aspects raised by the petitioner. The respondent No.2 has gone a step further to contend that the Central Government has no power to refer back the Scheme of yearly renewal to respondent No.2 – MCI for reconsideration. For, such direction could be issued only in relation to a Scheme for establishment of a new College. The provisions in the Act of 1956 regarding permission for establishment of new Medical College and new course of study etc., is found in Section 10A. The same reads thus :-

“10A. Permission for establishment of new medical college, new course of study. -(1) Notwithstanding anything contained in this Act or any other law for the time being in force-

(a) no person shall establish a medical college; or

(b) no medical college shall -

(i) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training),

except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2 - For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

(2) (a) Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the central Government shall refer the scheme to the Council for its recommendations.

(b) The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

(3) On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may, -

(a) if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council;

(b) consider the scheme, having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government.

(4) The Central Government may after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

Provided further that nothing in this sub section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

(6) In computing the time-limit specified in sub-section (5) the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government shall be excluded.

(7) The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

(a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be, under section 20 in the case of postgraduate medical education;

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course or study or training or accommodating the increased admission capacity have been provided or would be provided within the time-limit specified in the scheme;

(d) whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;

(e) whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;

(f) the requirement of manpower in the field of practice of medicine; and

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.”

(emphasis supplied)

17. In the recent decision of the Supreme Court in the case of **Swamy Devi Dayal** (supra), the scope of Section 10A has been analyzed. Besides holding that the requirement of affording personal hearing and adhering to principles of natural justice while considering the proposal being inviolable, the Court has noticed that the provision operates both for proposal for opening a new medical college as also for grant of renewal permission. In other words, the Scheme for yearly renewal permission is required to be processed under Section 10A read with the Regulations framed in that behalf in exercise of powers under Section 33 read with Section 10A of the Act in the same manner as for a new college. There is no independent provision for processing the Scheme for yearly renewal permission to be granted by the Central Government.

18. Reverting to the Regulations framed for establishment of Medical Colleges titled as ‘Establishment of Medical College Regulations 1999’ and in particular the provision regarding

reconsideration, it is expressly provided as under :-

“Reconsideration :-

When the Council in its report has not recommended the issue of Letter of Intent to the person, it may upon being so required by the Central Government reconsider the application and take into account new and additional information as may be forwarded by the Central Government. The Council shall, thereafter, submit its report in the same manner as prescribed for the initial report.”

(emphasis supplied)

19. The argument of the respondent No.2 that this provision can be invoked only in respect of Schemes for establishment of a new college, in our opinion, will be a pedantic approach. This Regulation does not make that distinction either expressly or impliedly. It applies to “all proposals” referred to in Regulation 8 – which can be for establishment of a new medical college or for renewal of permission, as the case may be. On the other hand, the provision refers to both situations and in particular to the report to be submitted by the Council, which is required to be submitted for both purposes. This, obviously, is an enabling provision, empowering the Central Government to send back the proposal for reconsideration if new or additional information or material is placed before the Central Government – other than reckoned by MCI in its recommendation report under consideration. Therefore, after the recommendation of MCI is received by the Central

Government, it is open to the Central Government to examine the same itself or to require the Council to reconsider the Scheme and submit its fresh report in the same manner as is required to be submitted in the first instance by the Council in prescribed Form No.4 for that purpose.

20. Indubitably, the Central Government is the final Authority in the matter of grant or non-grant of permission. The Council is only a recommendatory Authority. It is a different matter that the recommendation of the Council being experts opinion, is honoured by the Central Government in respect of fulfillment and compliance of educational standards by the institutions. That, however, does not mean that the Central Government has no authority to call upon the Council to reconsider its recommendation, if it is of the opinion that new or additional information has been brought to its notice, which may have been overlooked by the Council while making recommendation or that has become available after the recommendation is made by the Council.

21. Regulation 7 speaks about the report of the Medical Council of India, which, it is expected to submit along with its recommendation to the Central Government for consideration.

Regulation 7 reads thus :-

“7. REPORT OF THE MEDICAL COUNCIL OF INDIA:

(a) After examining the application and after conducting necessary physical inspections, the Medical Council shall send to the Central Government a factual report stating –

1. that the applicant fulfils the eligibility and qualifying criteria.
2. that the person has a feasible and time bound programme to set up the proposed medical college alongwith required infrastructural facilities including adequate hostels facilities separate for boys and girls, and as prescribed by the Council, commensurate with the proposed intake of students, so as to complete the medical college within a period of four years from the date of grant of permission;
3. that the person has a feasible and time bound expansion programme to provide additional beds and infrastructural facilities, as prescribed by the Medical Council of India, by way of upgradation of the existing hospital or by way of establishment of new hospital or both and further that the existing hospital as adequate clinical material for starting 1st year course.
4. that the person has the necessary managerial and financial capabilities to establish and maintain the proposed medical college and its ancillary facilities including a teaching hospital.
5. that the applicant has a feasible and time bound programme for recruitment of faculty and staff as per prescribed norms of the Council and that the necessary posts stand created.
6. that the applicant has appointed staff for the 1st year as per MCI norms.
7. that the applicant has not admitted any students.
8. Deficiencies, if any, in the infrastructure or faculty shall be pointed out indicating whether these are remediable or not.

(b) The recommendation of the Council whether Letter of Intent should be issued and if so, the number of seats per academic year should also be recommended. The Council shall recommend a time bound programme for the establishment of the medical college and expansion of the hospital facilities. This recommendation will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The recommendation will also define annual targets to be achieved by the person to commensurate with the intake of students during the following years.

(c) Where the Council recommends for not issuing of Letter of Intent, it shall furnish to the Central Government –

(i) its reasons for not granting the Central Government permission;
and (ii) documents /facts on the basis of which the Council
recommends the disapproval of the scheme.

(d) The recommendation of the Council shall be in Form-4.”

(emphasis supplied)

22. Form No.4 in which the recommendation is required to be submitted by the Council, is part of the Regulations. The same reads thus :-

FORM - 4

RECOMMENDATION OF THE MEDICAL COUNCIL OF INDIA

No.....

Medical Council of India

Place

Date

To

The Secretary,
 Ministry of Health and Family Welfare
 Nirman Bhawan,
 New Delhi.

(Attention : ME(P) desk)

Sub: Establishment of a medical college at by (name of the State Government/Union territory/Society/Trust).

Sir,

I am directed to refer to your letter No. dated on the above subject and to say that the physical and other infrastructural facilities available at the proposed medical college to be set up atby the (person) were inspected on by the Inspectors appointed by the Medical Council of India. A copy of the inspection report is enclosed.

2. The inspection report and all other related papers were placed before the Executive Committee of the Council in its meeting held on On careful consideration of the proposal, the Executive Committee decided to recommend to the Central Govt. for approval/disapproval of the Scheme. The decision of the Executive Committee has been approved by/will be placed before the General Body in its meeting/ensuing meeting held/to be held on

3. On careful consideration of the scheme and inspection report the Medical Council of India has arrived at the following conclusion:-

- (i) that the applicant fulfils the eligibility and qualifying criteria.
- (ii) that the applicant has a feasible and time bound programme to set up the proposed medical college along with required infrastructural facilities including adequate hostel facilities for boys and girls and as prescribed by the Medical Council of India, commensurate with the proposed intake of

students so as to complete the medical college within a period of four years from the date of grant of permission.

- (iii) that the applicant has a feasible and time bound expansion programme to provide additional beds and infrastructural facilities as prescribed by the Medical Council of India, by way of upgradation of the existing hospital or by way of establishment of new hospital or both so as to collectively provide the prescribed bed complement within a period of four years from the date of grant of permission to set up the proposed medical college.
- (iv) That the applicant has necessary managerial and financial capabilities to establish and maintain the proposed college and its ancillary facilities including a teaching hospital.
- (v) That the applicant has a feasible and time bound programme for recruitment of faculty and staff as per prescribed norms of the Council and that the necessary posts stand created.
- (vi) That the applicant has not admitted any students.
- (vii) Deficiencies if any in the infrastructure or faculty shall be pointed out indicating whether these are remediable or not.

The position regarding infrastructural facilities is as under:-

Sl.No.	Requirement at the time of inception as per MCI Norms	Available	Remarks
1.	Staff		
2.	Buildings		
3.	Equipment		
4.	Other requirement		

In view of the above position, the Council recommends to the Central Government for issuing/not issuing the Letter of Intent -

In case the Council does not recommend issue of Letter of Intent, the reasons for disapproval of the scheme are as under:-

- (a)
- (b)
- (c)

The scheme, in original, is returned herewith.

Yours faithfully,

SECRETARY
MEDICAL COUNCIL OF INDIA

Enclosures: - Inspector's report."

(emphasis supplied)

23. On receipt of the recommendation in the prescribed form, the Central Government is expected to process the same in terms of

Regulation 8 (as amended) which reads thus :-

“8. GRANT OF PERMISSION:

(1) The Central Government on the recommendation of the Council may issue a Letter of Intent to set up a new medical college with such conditions or modifications in the original proposal as may be considered necessary. This letter of Intent will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The formal permission may be granted after the above conditions and modifications are accepted and the performance bank guarantees for the required sums are furnished by the person and after consulting the Medical Council of India.

(2) The formal permission may include a time bound programme for the establishment of the medical college and expansion of the hospital facilities. The permission may also define annual targets as may be fixed by the Council to be achieved by the person to commensurate with the intake of students during the following years.

(3) (1) The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.

PROVIDED that in respect of

(a) Colleges in the stage upto II renewal (i.e. Admission of third batch):

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is < 60 %, such an institute will not be considered for renewal of permission in that Academic Year.

(b) Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B.B.S. degree :

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than

20% and/or bed occupancy is < 70 %, such an institute will not be considered for renewal of permission in that Academic Year.

(c) Colleges which are already recognized for award of M.B.B.S. degree and/or running Postgraduate Courses:

If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 10% and/or bed occupancy is < 80 %, such an institute will not be considered for processing applications for postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendation for withdrawal of recognition of the courses run by that institute should not be made for Undergraduate and Postgraduate courses which are recognized u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted Postgraduate courses.

(d) Colleges which are found to have employed teachers with faked/forged documents:

If it is observed that any institute is found to have employed a teacher with faked / forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission / recognition for award of M.B.B.S. degree / processing the applications for postgraduate courses for two Academic Years – i.e. that Academic Year and the next Academic Year also.

However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holidays declared by the Central/State Govt.

(2) The recognition so granted to an Undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upon which it shall have to be renewed.

(3) The procedure for “Renewal” of recognition shall be same as applicable for the award of recognition.

(4) Failure to seek timely renewal of recognition as required in sub -clause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute.”

(4) The council may obtain any other information from the proposed medical college as it deems fit and necessary.”

(emphasis supplied)

24. On conjoint reading of these provisions, we are of the considered opinion that the procedure to be followed for submitting recommendation by the Council is common for setting up a new medical college or for that matter for scheme for renewal of yearly permission. The provisions regarding that procedure is

composite and common for both situations. Further, it is open to the Central Government either to approve or disapprove the Scheme as recommended by the Council or to call upon the Council to review/assess the Scheme and to submit its fresh report-cum-recommendation in Form No.4. Any other interpretation would run counter to the legislative scheme and the checks and balances provided for ensuring quality education in particular in the field of medicine.

25. In the present case, the Central Government vide letter dated 17.04.2015 (Annexure P-11), referred back the scheme of selected Medical Colleges out of total 36 colleges, for review by MCI. It would have been desirable, if the Central Government while referring back the scheme in respect of given College were to also broadly indicate as to why review by MCI was found necessary and the matters in respect of which the review must be done. That would not only provide guidance or insight to MCI to re-examine the Scheme of the said College on those specific issues but also obviate any speculation and facilitate MCI to re-submit its recommendation in the specified time frame. This observation has become necessary in the backdrop of the grievance made by the petitioner about the inappropriateness of the observations made in

the Council Assessor Report - which was made the foundation by the Executive Committee of the Council to make negative recommendation to the Central Government qua the petitioner. Inasmuch as, the grievance of the petitioner before the Central Government against the recommendation of the Council was manifold, including of having failed to adhere to principles of natural justice and moreso, of not having given time to rectify the deficiencies, if any. Further, the recommendation of the Council sent in the first round was not in Form No.4, to provide for classified information and observation [reasons as specified in Regulation 7(c)] and including as to whether the deficiencies noticed were remediable or not. This grievance assumes significance because permission for opening new College was already granted to the petitioner and first batch of students were pursuing medical course in the same College. If the deficiencies are of serious nature, it may have cascading effect on the quality of medical education imparted to the students pursuing medical course in such College. Neither the Council nor the Central Government can afford to be oblivious of this matter while considering the scheme for yearly renewal. Insistence by the Central Government for submission of recommendation in Form

No.4, which is part of the Regulations can neither be objectionable nor that can be said to be a mere formality to be dispensed with by the Authorities. Suffice it to observe that there is ample indication in the provisions of the Act and the Regulations framed thereunder, to permit remand of the Scheme to the Medical Council for reconsideration and for submission of fresh recommendation in the prescribed Form No.4.

26. Reverting to the argument of the Respondent No.2 MCI that the Council had invoked powers under Section 10 A (4) of having sent its recommendation to the Central Government in respect of scheme for yearly renewal, it is not open to the Central Government to refer back the matter to the MCI, will have to be stated to be rejected for the reasons already recorded hitherto. We are of the opinion that Section 10A is a composite provision dealing with both the schemes for establishment of a new medical college as also for yearly renewal of permission, as is the dictum of the Supreme Court in the case of **Swami Devi Dayal Hospital and Dental College** (supra). The procedure for processing of proposal in both the situations is governed by Section 10A of the Act read with Regulations 7 and 8 of the Regulations. Further, the provision in the Regulations regarding reconsideration, makes no distinction

between the nature of recommendation or being limited to reconsideration of scheme for establishing a new medical college only. Any other view would be a pedantic approach. We hold that there is not only express provision to reinforce this view, but there is intrinsic power in the final Authority (Central Government) to call upon the recommending Authority (MCI) on matters which have been overlooked by the latter or because of new or additional information brought to its notice by the college which required due consideration. This is so because duty to ensure full compliance of all standards for imparting quality medical education rests on the MCI. Thus understood, the Central Government before taking final decision to approve or disapprove the scheme may justly rely on and insist for complete disclosure of matters referred to in Form No.4.

27. That takes us to the question of legality of the decision taken by the Executive Committee of the MCI on 29.4.2015 (Annexure P-12), in the present case. The said decision has been reproduced in the communication dated 11.5.2015 (Annexure P-14). The Executive Committee of MCI has merely adverted to its previous recommendations and observations recorded in the minutes of its meeting dated 22.03.2015 and additionally to the legal opinion

dated 14.03.2015 concerning the petitioner-College without referring to the spirit of the direction given by the Central Government dated 17.04.2015 to reconsider the scheme afresh. Notably, the legal opinion was sought on 14.03.2015 on “two queries” referred to therein and not with reference to the direction issued by the Central Government vide letter dated 17.04.2015 and more particularly, the documents forwarded to the MCI by the Central Government therewith, in subsequent point of time. The legal opinion dated 14.03.2015 was on the interpretation of Regulation 8 (3) (1) (a) (b) and (c); and not specific to the issues raised by the petitioners before the Central Government and mentioned in the explanation-cum-compliance statement submitted by the petitioner for which the proposal was referred back for reconsideration. Be that as it may, the legal opinion was that there was no statutory provision under the Act or Regulation to authorise MCI to process the scheme for renewal after the finding is given by the Assessors on the factum of deficiencies referable to Regulation 8 (3) (1) (a), (b) or (c), being opinion of experts and independent persons. The MCI cannot grant any time to the Medical College for rectification of such deficiencies, as the same cannot be rectified within a short span of time. At the same time,

the legal advise given to the MCI in the said opinion was that statutory scheme does not, however, bar an institute to be considered for the purpose of recognition of MBBS degree of the students who have successfully completed the course. Any action against such students by MCI will be too harsh on such students who have no control over either the College, MCI or the Central Government. Indeed, the MCI was within its rights to take that opinion or to accept the same on legal issues. But since the legal opinion did not specifically deal with the issues raised by the petitioner before the Central Government as a result of which the matter was referred back, can be of no avail. Notably, the Executive Committee has not only considered the aforesaid legal opinion qua the petitioner college but also the legal opinion given in respect of some other College, Malla Reddy College, with which the petitioner had no concern. Yet the Executive Committee considered both the opinions together to send negative recommendation against the petitioner College, as can be discerned from the concluding paragraph of the same minutes dated 29.04.2015.

28. The legal opinion as also the Executive Committee has considered the matter of petitioner on the basis of provisions of

Regulations 8 (3) (1) (a) only, as was also argued before the Supreme Court whilst challenging the interim order dated 21.5.2015 in S.L.P. (C) No.16454/2015. The same is applicable to colleges applying for renewal in the stage upto (II) (i.e. Admission of 3rd batch) and because of the observations noted in the Council Assessors Report, in particular, at No.1, 2 3 & 9, the Executive Committee decided to submit negative recommendation. The relevant deficiencies noticed in the Council Assessor Report, as pressed into service by the MCI against the petitioner college reads thus :-

- “1. Deficiency of Teaching Faculty is 19.81% as detailed in report.
 2. Shortage of residents is 49% as detailed in report.
 3. Bed occupancy is 48% on the day of assessment.
 - 4 to 8.....
 9. Dr. Navneet Mishra, Asstt. Professor of General Surgery had attached wrong experience certificate.”
- (emphasis supplied)

29. The issue raised by the petitioner, however, was that the deficiencies were computed on the basis of the factual position noticed on the day of assessment and not on the basis of average shortage of residents or the bed occupancy. Neither the legal opinion nor the analysis done by the Executive Committee of MCI in its meeting dated 29.04.2015 have made any attempt to answer this explanation given by the petitioner. Similarly, with regard to deficiency No.9 regarding wrong experience certificate, the

petitioner had raised a specific plea that wrong experience certificate of “one” Professor, in the college, cannot be the basis to invoke the extreme action. That approach is impermissible on the interpretation of sub-Clause (d) of Regulation 8 (3) (1). For, the said provision uses plural expression “Teachers”. The later part of the said provision cannot be the basis to overlook this aspect. Even on this question, there is absolutely no consideration either in the stated legal opinion or the minutes of the Executive Committee dated 29.04.2015.

30. Suffice it to observe that specific explanation and compliance statement was submitted by the petitioner before the Central Government which was available with MCI as forwarded by the Central Government along with the communication dated 17.04.2015, for reconsideration. None of those points have been dealt with by the Executive Committee. Further, MCI has failed to submit its recommendation in Form No.4, which was mandatory. Even this plea raised by the petitioner before the Central Government has not been adverted to by the Executive Committee or the MCI before submitting its fresh recommendation to the Central Government.

31. It is thus evident that in the reconsideration process, the

Executive Committee of the MCI did not advert to the explanation-cum-compliance report submitted by the petitioner before the Central Government pointwise. It would have been a different matter if the Executive Committee were to consider the same and then to form opinion one way or the other pointwise before taking final decision to resend the negative recommendation. The MCI has acted mechanically in taking decision on 29.4.2015, which decision is bordering on non-application of mind if not abdication of its duty. The MCI can ill-afford to process the scheme for establishment of a new medical college or for additional capacity in any course of study in such casual manner. For, it not only affects the institution intending to start such courses, but the teeming million student population aspiring to pursue medical courses. The MCI is not only expected to ensure that the existing medical college fulfills all the norms and standards to ensure imparting of quality medical education, but must also be concerned about the burgeoning requirement of the society and of creating opportunity to the deserving students who are keen to pursue medical course, keeping in mind the deficient number of doctors' ratio catering to the society. The MCI is expected to adopt a pragmatic and holistic approach in processing of such schemes. We

are required to make these observations as in companion W.P. No.7915/2015 (**Gyanjeet Sewa Mission Trust Vs. Union of India and others**), which has been heard along with this writ petition and is disposed of today by a separate judgment, we have noticed the preposterous approach of the MCI in sending negative recommendation for permission to open a new medical college, inspite of compliance of the formality of consent of affiliation issued by the newly established M.P. Medical Science University as insisted by the Council and inspite of the observations made by the Central Government to give one more opportunity to the institute to do so.

32. Be that as it may, in our opinion, the decision of the Executive Committee of the MCI dated 29.4.2015 (Annexure P-12) qua the scheme submitted by the petitioner, is unsustainable in law and is not in consonance with the spirit of the directive given by the Central Government of review of the scheme for yearly renewal permission of the petitioner college.

33. The next question is whether the MCI, before submitting its negative recommendation report in prescribed form to the Central Government, is obliged to call upon the applicant college to explain the deficiencies or the adverse observations noticed by it

and to give sufficient opportunity to the college to remove the deficiencies, if any, especially in the matter of renewal of yearly permission for a college which has already started functioning pursuant to a valid permission. This concern has been taken note of by the Supreme Court in the case of **Priyadarshini Dental College and Hospital** (supra). In paragraph No.23 of the said decision the Court observed thus :-

“23. In all these cases, the petitioners, who were the applicants for renewal were existing dental college, which were functioning for three or four years and each college had admitted hundreds of students either directly or through the State Government allotment. The colleges had the benefit of initial permission and several renewals of permission. Refusal of renewal of permission in such cases should not be abrupt nor for insignificant or technical violations. Nor should such applications be dealt in a casual manner, by either granting less than a week for setting right the “deficiencies” or not granting an effective hearing before refusal. The entire process of verification and inspection relating to renewal of permission, should be done well in time so that such existing colleges have adequate and reasonable time to set right the deficiencies or offer explanations to the deficiencies. The object of providing for annual renewal of permissions for four years, is to ensure that the infrastructural and faculty requirements are fulfilled in a gradual manner, and not to cause disruption.”

(emphasis supplied)

34. We may usefully also refer to the principle underlying the dictum of the Supreme Court in the case of **Swami Devi Dayal Hospital and Dental College** (supra), to reject the argument of Respondent No.2 (MCI) that there is no requirement of personal hearing before submitting its negative report to the Central Government. Indeed, in that case, the question considered by the Court was whether personal hearing was required to be given by

the Central Government before passing the order refusing to grant the yearly renewal permission. However, after analyzing Section 10A of the Act, the Supreme Court went on to observe that principles of natural justice must be followed at two stages. Firstly, at the level of the Council to make a written representation and also to rectify the deficiencies, if any, specified by it and then by the Central Government before it passes any adverse orders, as it is final Administrative Authority vested with powers to pass such orders. In the abovenoted reported decision, the Supreme Court has referred to its earlier decisions and has noted that, in the absence of specific provision of giving hearing, the hearing is required in such cases unless expressly excluded by a statutory provision before recommending denial of permission by the MCI. It is unnecessary to underscore the significance of affording hearing and to explain and satisfy the MCI about appropriateness of adverse observations. Further, keeping in mind that the decision of MCI of sending negative recommendation not only has serious ramification for the institution but also the students aspiring to pursue medical course, it would be just and appropriate that the MCI before submitting its adverse report on matters which otherwise could be explained and clarified by the institution, give opportunity to the institution in

that regard, so as to fulfil its obligation of following principles of natural justice even at that stage. Indisputably, negative report by the MCI would inevitably visit the college with civil consequences, as the college may not be able to enroll fresh students in the new academic year. The fact that inspection was carried out and the Council Assessor Report identified certain deficiencies after giving opportunity to the petitioner college should not denude the institution – of an opportunity to explain the position to MCI, before MCI submits its negative recommendation. That procedure would facilitate MCI to make a clear recommendation including as to whether the deficiencies are remediable or not. On this count also, the decision of the Executive Committee of the MCI dated 29.4.2015 (Annexure P-12) deserves to be overturned and as a necessary corollary the communication sent by the MCI dated 11.5.2015 (Annexure P-14) deserves to be set aside.

35. The consequence of setting aside of the decision of the MCI dated 29.4.2015 (Annexure P-12) and the consequential communication dated 11.5.2015 (Annexure P-14), necessitates placing the parties in the same position as on the date of communication sent by the Central Government dated 17.4.2015, calling upon the MCI to review/assess the scheme of the petitioner

and to submit fresh recommendation in Form No.4. Having said this, it is unnecessary for us to dilate on other questions raised by the petitioner about inappropriate observations in the Council Assessor Report or the deficiencies noticed by the MCI in its first negative recommendation, as those matters will have to be reconsidered by the MCI afresh after giving opportunity to the petitioner. That must be done at the earliest and before the ensuing Common Entrance Examination for admission to medical course commences, so that the Central Government would be in a position to take a final decision on the scheme for yearly renewal of permission submitted by the petitioner before the admission process to MBBS course for the academic year 2015-16 begins on the basis of the ensuing examination results. Indeed, the respondents have invited our attention to the decisions of the Supreme Court in the case of **Mridul Dhar** (supra), **Priya Gupta** (supra) and the schedule appended to the Regulations to point out that the cut off date for granting permission has already lapsed on 15.6.2015. However, we are persuaded to grant relief to the petitioner keeping in mind the dictum of the Supreme Court in the case of **Royal Medical Trust (Regd.)** (supra). Even in that case, the medical college had approached the Authorities before the cut

off date, as in the present case. But, the proposal was protracted due to circumstances beyond the control of the said applicant. The Court after considering the two decisions relied by the respondents before us, went on to observe as follows:-

“12. In the instant case, the appellant mindful of the aforesaid directions of this Court had applied in due time adhering to the statutory timelines. Its application in terms of necessary documents was in fact complete but for the Affiliation Certificate from KUHS which was awaited by the appellant even after several reminders for its issuance to KUHS pressing upon the urgency of the matter. Since the appellant was not at fault but constrained due to delay on part of KUCH, the Council was expected to have appropriately considered the facts and circumstances of the case pleaded by the appellant and thereafter, reached a conclusion one way or the other on its merits instead of functioning in such mechanical manner by rejecting the application filed by the appellant and, thereafter, forwarding it to the Central Government with its adverse recommendations. In our considered opinion, this aspect of the matter ought to have been noticed by the Writ Court in Writ Petition as well as the Writ Appeal. Since that has not been done, in our considered view, we cannot sustain the impugned judgment and order passed by the High Court. 13. Accordingly, while allowing the appeal, we direct the Council to register the application for the academic year 2013-2014 and thereafter, proceed with the matter on its merits in accordance with Act and Rules thereto within 15 days time from today. The higher authority, after receipt of the recommendations made by the Council, will act upon such recommendations and pass appropriate orders in accordance with law as expeditiously as possible, at any rate within a month’s time from today.”

These directions were given on “10.9.2013”, during the academic year 2013-14.

36. In the present case, the applicant had submitted the scheme for grant of yearly renewal permission in July 2014 for academic year 2015-16, which was processed by the MCI and culminated with the negative recommendation submitted by it to the Central Government on 5.3.2015. The Central Government after

considering the objection and explanation of the petitioner thought it appropriate to refer back the matter to the MCI on 17.4.2015. No doubt, MCI took the decision on 29.4.2015 and communicated the same to the Central Government on 11.5.2015, but the petitioner immediately approached this Court on 15.5.2015 and also persuaded the Court to grant interim relief on 21.5.2015. However, the MCI took the matter to the Supreme Court against that decision, by way of SLP (Civil) No.16454/2015 which was disposed of on 4.6.2015.

37. Suffice it to observe, that the petitioner has acted with utmost dispatch and has succeeded in persuading the Court that the action of MCI of forwarding negative report even on the second occasion after remand, is unsustainable. In such a case, to do complete justice – *ex debito justitiae*, it has become essential to direct the Authorities to process the scheme for yearly renewal permission further and take it to its logical end expeditiously and in any case before commencement of admission process for the academic year 2015-16 after declaration of results of the examination scheduled on 15.7.2015 and are being conducted in furtherance of the decision of the Supreme Court in the case of **Tanvi Sarwal Vs. Central Board of Secondary Education and others (W.P. (Civil))**

No.298/2015) dated 15.6.2015. Since declaration of Central Entrance Examination results may take some time, there is enough time for the Central Government to consider the subject scheme submitted by the petitioner and if the same is approved, no prejudice would be caused to any student. In other words, issuance of letter of permission by the Central Government can still be complied well in time.

38. We make it clear that we are not expressing any opinion on the merits of the other grounds raised by the petitioner. Those are all matters which will have to be considered by the MCI, in the first place, before sending its recommendation and also by the Central Government. We may not be understood to have expressed any opinion on the issues which may be germane for grant of approval or disapproval of the scheme for renewal of permission submitted by the petitioner.

39. Reliance was placed by the Respondent No.2 on the unreported decision of the Supreme Court in the case of Shree Chhatrapati Shivaji Education Society (supra). Counsel for the petitioner, however, pointed out that the observation found in Paragraph No.23 of the said judgment is in the teeth of the observations of the Supreme Court in the case of Swami Devi

Dayal Hospital and Dental College (supra). It is not necessary for us to elaborate on this matter, as the question considered in the said decision was essentially about the validity of proviso (b) to Regulation 8 (3) (1) as amended on 16.4.2010 of the Establishment of Medical College Regulations, 1999. Similarly, even the other Supreme Court decisions pressed into service by Respondent No.2, referred to in paragraph 9 above, are inapplicable to the questions dealt with in this judgement. For, the petitioner has not questioned the authority of the MCI to reconsider the scheme as directed by the Central Government as such or that MCI must decide the same *dehors* the provisions of the Act and the Regulations.

40. In view of the above, we set aside the impugned decision of MCI dated 29.4.2015 (Annexure P-12) as well as subsequent communication dated 11.5.2015 (Annexure P-14); and instead direct MCI to review/assess the scheme for yearly renewal of permission submitted by the petitioner college, in the light of the directions given by the Central Government vide communication dated 17.4.2015 (Annexure P-11). The Respondent No.2 shall expeditiously forward its recommendation report to the Central Government and preferably within one week from today to enable the Central Government to process the same further and take a final

decision before the process of admission to medical course for academic year 2015-16 commences after declaration of examination results of the entrance examination scheduled on 15.7.2015.

41. We also direct the MCI as well as the Central Government to consider the subject scheme submitted by the petitioner without being influenced by the communication dated 15.6.2015 issued under the signature of Under Secretary, Government of India, Ministry of Health and Family Welfare, which is produced alongwith the written submission of Respondent No.1, as we have construed that communication to be only a direction given that the petitioner college cannot enroll new students for the academic year 2015-16 without formal permission issued by the Central Government in that behalf.

42. Accordingly, the petition is allowed on the above terms, with no order as to costs. In view of the disposal of this writ petition, the interlocutory applications are also **disposed of**.

(A.M. Khanwilkar)
Chief Justice

(K.K.Trivedi)
Judge

Anchal/AM.