

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writs No. 10103/2018

Jaipur National University Institute for Medical Sciences and Research Centre, Jaipur, Jaipur Agra Bypass, Neaw New RTO Office, Jagatpura Jaipur, Rajasthan 302017 represented by its Registrar Prof. D.K. Mathur

----Petitioner

Versus

1. Union of India, represented by its Secretary (Medical Education), Ministry of Health & Family Welfare Nirman Bhavan New Delhi-110011.

2. Medical Council of India, through its Chairman, Pocket 14, Sector 8, Dwarka Phase-I, New Delhi-110077

----Respondent



For Petitioner(s) : Mr. Kamlakar Sharma Senior Counsel
with Mr. Rishabh Khandelwal

For Respondent(s) : Mr. Angad Mirdha, Mr. Ashish Kumar

**HON'BLE MR. JUSTICE KALPESH SATYENDRA JHAVERI
HON'BLE MR. JUSTICE VIJAY KUMAR VYAS**

Order

17/07/2018

1. By way of this petition, the petitioner has challenged the order passed by the Central Government as well as the Medical Council of India whereby the recognition for the III Batch (II renewal) for Medical College within the city of Jaipur was rejected in spite of fulfilling all requirements by them.

1.1. They have also challenged the clause B.1.1 at serial no. 7 in amendment notification dated 22nd January, 2018 in minimum requirement for of 150 MBBS Admission annually Regulation 2017 which provides having minimum 60% indoor occupancy for second

renewal as provided in the tabulated form as set out in serial no. 10 i.e. Bed occupancy percentage for renewal (III batch) as unconstitutional, ultravires in violation of Article 14 of Constitution of India and also prayed for setting aside and quashing the order dated 1st May, 2018 issued by respondent no.1-Union of India and to pass appropriate order granting letter of permission for admission of 150 MBBS seats.



2. The petitioner-College was established in the year 2016 with all requisite permissions by registered of Rajasthan, Medical Council of India and the Central Government and took admission for its first batch of 150 MBBS seats in the academic year 2016-17. The letter of permission dated 6th June, 2016 which was approved by the Central Government vide his order Annexure-1 has been filed.

3. Even the second batch of 150 MBBS students was approved on 31st May, 2017. However, when for the renewal of permission for admission of third batch, the matter went to the Supreme Court and on 17th January, 2018 in Writ Petition (Civil) 432/2017 passed the following order:-

“In the instant case, this Court has directed the Medical Council of India and other respondents to consider the case for the year 2018-2019. The inspection has been made by the Medical Council of India and they have to take a call on the basis of the report as per procedure under the rules. Let the Government of India and Medical Council of India take decision in the matter by 31st March, 2018 in accordance with law.

In case any of the college is aggrieved by the decision so taken would be at liberty to question it in accordance with the law. Nothing further survives for adjudication in the instant matters. The writ petitions are disposed of in terms of the aforesaid direction.”

4. Pursuant to which inspection was carried out on 31st October, 2017 and 1st November, 2017. At that time, the Medical Council of India has found following deficiencies which were communicated to the petitioner vide order dated 15th December, 2017 which reads as under:-

"The Secretary,
Govt. of India,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi-110011.



Sub: Renewal of permission of MBBS course for 3rd batch (150 seats) of Jaipur National University Institute for medical Sciences & Research Centre, Jagatpura, Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act, 1956 for the academic year 2018-19.

Sir,

I am directed to inform you that an assessment of the physical and other teaching facilities available for renewal of permission for MBBS course for 3rd batch (150 seats) of Jaipur National University Institute for medical sciences & research centre, Jagatpura, Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act, 1956 for the academic year 2018-19 was carried out by the Council Assessors on 31st October & 1st November, 2017. The assessment report [31st October & 1st november, 2017] was considered by the Executive Committee of the Council at its meeting held on 22.11.2017 and it was decided as under:-

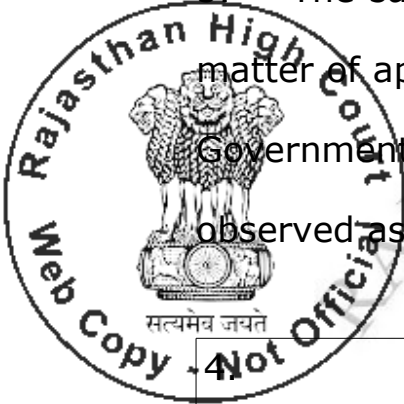
"The Executive Committee of the Council considered the assessment report [31st October & 1st November, 2017] and noted the following:-

1. Bed Occupancy data as given by the Institute i.e. 79.33% is inflated.
2. OPD attendance – Institute has provided data of 792. Assessors have stated "When we reached Institute and took round around 10:45 a.m., there were very few patients at the registration counters, waiting area & even in OPDs."
3. Anatomy department: 2 Disarticulated bone sets are less.
4. Pathology department: 3 Service Laboratories are available against requirement of 4.
5. Other deficiencies as pointed out in the assessment report.

In view of above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 3rd batch of 150 MBBS students at Jaipur National University Institute for Medical Science & Research Centre, Jagatpura, Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act, 1956 for the academic year 2018-2019."

The above decision of the Executive Committee has been approved by the Oversight Committee on 14.12.2017."

5. The said decision of the Medical Council of India was subject matter of approval before the Central Government and the Central Government vide its decision dated 15th January, 2018 has observed as under:-



	<p>Jaipur National University Inst. of Medical Sciences & Research Centre, Jagatpura (Pvt.) [Renewal of permission for MBBS course for 3rd Batch (150 seat)]</p>	<p>Submissions as made by the college at column 4. No deficiency of faculty and residents has been pointed out. <u>The deficiency of Bed Occupancy would also not hold since the assessors have verified at 64.33% against the requirement of 60%. The committee notes that while the assessors have recorded the date of 4 labs in Pathology department in SAF, a deficiency is raised that the college has 3 instead of 4 service labs. <u>The committee finds no merit in depriving the college of renewal permission. MCI may review its decision.</u></u></p>
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6. In view of the above, the MCI was requested to review the schemes in the light of documents submitted by the College/applicants and the recommendation of the Committee and furnish its recommendation accordingly to this Ministry. This decision was taken on 15th January, 2018 pursuant to the order of Central Government.

6.1. However, instead of reviewing the decision, it come out from the record that the MCI has decided to make further verification and compliance verification assessment was submitted on 5th March, 2018 and pursuant to the same, the petitioner was communicated following deficiencies vide its report which was submitted on the same day.

6.2. Inasmuch as 10 deficiencies were pointed out by the management. The management of the petitioner vide letter dated 7th March, 2018 which was received by the MCI on 9th March, 2018 has explained each of the deficiency.

6.3. For ready reference, we are reproducing the deficiencies shown by the MCI and explanation tendered by the College which reads as under:-

S. No.	Remarks of the assessors after the assessment	Representation of Facts by the College	Annexure/Evidence Sheet
1	Bed occupancy was 57.33% on the day of inspection 172 patients out of required 300 beds) The following patients of surgery wards registration number 201802260485	The actual bed occupancy was 68.33% which exceeds the laid down criteria of MCI which is 60% inspite of compliance verification assessment was done just after Holi, a major religious festival of North India, there were 205 patients against 300 teaching beds on the day of assessment, which is also evident by the pictures captured on the	

	<p>name Vijendar admitted on 26th February, 2018 for PCNL diagnosis is right renal stone, IP no. 201802090472</p> <p>name Kishan admitted for haematuria on 1st March, 2018. On examination he was al right without any complaints. Reg No. 201802100022</p> <p>Nurmohmd Admitted for right renal stone for PCNL. SR (Dr. Jitendra) dines not know about the patients IP No. 201803020022</p> <p>name Lalban diagnosis urethral stricture admitted for MCU investigation. Ip No. 201802220426</p> <p>name Kamal Malhotra is operated for laproscopic appendectomy post operative day 10 with healthy stitch line. IP No. 2021801030463</p> <p>Ravi Shankar admitted for AKT toxicity. 201803040020</p> <p>names Ramdhan admitted for Right cheek sebaceous cyst. IP No. 201803030162</p>	<p>day of Assessment (Annexure 1.01, 1.02). Out of these 205 patients, a major chunk was og Govt. empanelled patients that comes around 77% which is evident from the record enclosed. (Annexure D).</p> <p>This is imperative to mention that JNUIMNSRC is partnering the Govt of Rajasthan for ambitious "Bhamashah Swasthya Bima Yojna' since inspection of the scheme and the Institute is instrumental for the success of this scheme in the State of Rajasthan by being one of the top institutes catering highest number of patients empanelled by the Government. (the copy of MoU and financial transactions of the scheme annexed) (Annexure B & C)</p> <p>This is essential to say that being undergraduate teaching hospital, admission of these patients was also necessary to teach the students in 4th and 5th semesters to make them understand the evaluation of primary complaints. Admissions in hospital are made by treating doctors based on acuteness of symptoms, clinical signs and assessment of concerned specialist regarding the severity of disease and anticipated complications and need for close monitoring and treatment. A patient wise representation is submitted justifying that admission was necessary and patient under discussion could not be managed on OPD basis as commented by the asessor.</p>	
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	<p>name Amir (a) Vijendra 59 Y/M admitted for (201802260485) Enteric fever (Beneficiary of Government without any sponsored BSBY scheme) investigation (Annexure 1.03) since past five This patient has been days. In Medicine admitted with Right Renal ware IP Stone on 26th February, 201803030159 2018. After getting all name Vinod routine investigations, IVP diagnosis is was done on 27th Feb 2018. scabies with Patient got operated on 01 upper respiratory March 2018. Nephrostomy tract infection was removed on 03 Mar who is clinically 2018. alright. In Foley Catheter was orthopaedic ward removed on 04 Mar 2018. 201803030465 Patient was discharged on Kamal Sahai 06 Mar 2018. There was admitted with enough justification for knee pain, keeping the patient in 201803030265 hospital for the above Bomaram period. admitted for poly (b) Kishan 62 Y/M arthralgia, (20180290472) 201803030275 (Beneficiary of Government Amir Khan sponsored BSBY scheme) admitted for Annexure 1.04) Right knee pain. This patient was operated 201803030288 for TURP on 20th Feb 2018 name Sikhaben and was discharged. for right knee Patient again presented joint pain, with recurrent episode of 201803030270 gross haematuria on 01 Nathiben Mar 2018 likely to be admitted for secondary haemorrhage. bilateral knee Patient was put on joint pain, antibiotic and haemostatic 201803030460 agent and investigations name Ushaben were done (CBC, URINE admitted for RE/ME). After 48 hours backache & poly Haematuria resolved and arthralgia. patient was discharged on 201803040087 06 Mar 2018. A case of Poojaben, prostatic surgery with 201803030464 secondary haemorrhage Anishaben requires admission for admitted for management. backache. (These © Nur Mohhmmad patients did not (201802100022) Annexure count for bed 1.05) presented with occupancy as vomiting and fever of 2 these cases may days duration. He was a be treated as diagnosed case of rt sided</p>	
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OPD cases. Signed evidence sheet is given) these cases are insignificant for teaching purpose for students. In dermatology ward patients says he is admitted for since last few days but case sheets shows I.p.d. no. 20180303030029 name Mr. Chintuprasad on 3rd March only. Female dermatology ward all four patients were treated with liq-parafine, tab. Antihistaminic and vit. C tab. Only, which indicates these patients need not to be admitted.

lower ureteric stone with it renal stone. He underwent rt open urtrolithotomy with it PCN diversion which was draining pus. He underwent Lt sided PCNL on 05 Mar 2018. There was enough justification for hospitalization of patient. Dr. Jitendra Singh (Senior resident) is posted in Surgical Unit-I under Prof. Dr. K.M. Garg whereas the patient Mr. Nur Mohmd was admitted in Unit-II under Prof. A K mathur. Male surgical Ward-I houses patients of Unit-I and Unit-II (20 bed of Unit-I & 10 beds of Unit-II). The SR Dr. Jitendra Singh was representing Unit-I and he was not supposed to be conversant with unit-II cases. (d) Lalban (to be read as Lala Bhai 22 Y/M (201803020022) (Beneficiary of Government sponsored BSBY scheme) (Annexure 1.06) This patient was a known case of PFUDD (Pelvic Fracture Urethral Distraction Defect) got operated 01 month back. Patient was admitted in Emergency with severe Penile Pain on 3 Mar 2018 for which Parenteral Analgesic was started. After subsiding the pain patient was planned for MCU/RGU. These investigation were done on 6 Mar 2018. Images of RGU/MCU are attached. Now the Perurethral Catheter of the patient has been removed. Patient is passing urine peruretherilly and planned to discharge after 48 hrs. Hospitalization for management of this case





was essential

(e) Kamal Malhotra
(201802220426)
(Annexure 1.07)

Patient was admitted as a case of Appendicular Lump and was kept on Ochsner-Sherren regimen. Since he was not responding to conservative treatment, the decision to operate was taken.

Laparoscopic surgery was carried out on 24 Feb. 2018. Since there was lot of caecal wall and terminal ileal oedema with pus in paracolic gutter, the patient was kept under close observation during convalescence for possible development and timely detection of post operative complication such as fecal fistula. Therefore this patient required inpatient management.

(f) Ravi Shankar
(201801030463)
(Annexure 1.08)

Patient Ravi Shankar was a case of Koch's Abdomen, operated in this hospital 2 months ago and was on follow up ATT. He was readmitted on 2 Feb 2018 with feature of drug induced hepatitis. He was admitted under care of operating Surgeon Prof. K.M. Garg with cross consultation of physician for hepatitis. He needed retreatment with antitubercular drugs under close monitoring which involve stoppage of all previous drugs and reintroduction in gradually increasing doses, which was done in this case. As the patient required close monitoring of clinical and biochemical parameters every day he had to be



kept in hospital to avoid life threatening complications.

(g) Ramdhan
(201803040020)

(Beneficiary of Government Sponsored BSBY scheme)
(Annexure 1.09)

Patient was admitted as a case of Cheek swelling on 4 Mar 2018. Patient gave history of tobacco chewing. The swelling of this area needs proper evaluation and surgery under supervision of senior surgeon. Hence, patient was admitted and operated on 6 Mar 2018.

PAEDIATRICS

(a) Amir 14 Y/M
(201803030162)

(Annexure 1.10)

Patient was admitted on 3 Mar 2018 with history of fever for last 4-5 days on admission he had fever of 101°F. Provisional diagnosis was kept as enteric fever with Toxemia. He was admitted, started with IV antibiotics and investigations were sent. His reports for CBC, malarial antigen and widal Test were checked online and found to be negative. Hence, IV antibiotics were stopped and he was put on oral Cefixime on 5 Mar 2018. patient was hospitalized for administration of parenteral antibiotics.

(b) Vinod 14 Y/M
(201803030159)

(Annexure 1.11)

Patients admitted with cough and cold for 3 days and fever for 2 days. He had vilateral crepitations in lungs. Hence diagnosed as a case of ARI which could be bronchopneumonia also. He needed IV antibiotics for



which he was admitted. He was found to have coexisting scabies for which treatment was started alongwith treatment of acute chest infection. In view of ongoing swine flu epidemic in Jaipur cautious approach to acute chest infections is justified. The admission of this patient is required because ARI includes both upper and lower respiratory infections. It was not a case of URI as mentioned by assessor.

ORTHOPAEDIC CASES

(a) Kamal Sahai (to be read as kalam Sahai) (201803030465)(Annexure 1.12)

Patient admitted with diagnosis of severe Osteoarthritis (B/L Knee). Patient was having severe pain with difficulty in walking. Therefore he was admitted for management and evaluation for bilateral Osteoarthritis knee. Patient has severe Osteoarthritis changes in B/L knee.

(b) Boma Ram (201803030275) (Annexure 1.13)

Patient was admitted with Polyarthralgia with diagnosis of Seronegative arthritis. He was having symptoms for past few years without any relief on OPD treatment in many other centres. Therefore patient was admitted for detailed evaluation and treatment of joint pains.

(c) Amir Khan (201803030275)(Annexure 1.14)

Patient presented with alleged H/o fall 2-3 days back, admitted in ortho ward with soft tissue injury right Knee. On



examination, diffuse Swelling Right Knee with Lachman Test +ve, Planned for aspiration of Right Knee and compression bandage. Aspiration of knee joint was done on 5 March 18 and 50 ml of haemorrhagic fluid was removed from joint space. Patient needed immobilization with Ice packs due to clinical ACL (Anterior cruciate Ligament) injury.

(b) Mrs Shikha (to be read as Shakila) (201803030288) (annexure 1.15)

Patient admitted with Low Backache and Right Knee pain.

Patient presented with Chronic low Backache since 2 months and Right Knee Pain since 1 month. Patient previously treated conservatively without any relief on OPD treatment. So this, patient was admitted for evaluation, management and Physiotherapy for pain relief.

(f) Mrs. Nathiben (to be read as Nathi) (201803030270)(Annexure 1.16)

Patient admitted with diagnosis of severe osteoarthritis (Bilateral Knee) with Acute Strain. She was having severe pain with difficulty in walking. Patient admitted for evaluation for need of total knee replacement and for management of Acute Strain in bilateral Osteoarthritis knee.

(g) Mrs Ritaben (to be read as Rita)(201803040088) (Annexure 1.17) Patient with alleged H/o fall, admitted in ortho ward due



to Severe pain Rt heel and inability to bear weight on Lower Limb due to heel pain. Patient was in severe discomfort on admission and was unable to walk which justified admission.

(g) Mrs. Usha (201803030406)(Annexure 1.18)

Patient with H/o Rheumatoid arthritis (RA factor +ve, Anti-CCP +ve, CRP +ve) admitted with Severe Chronic Low Backache, B/L Knee pain and Multiple joint pains including small joints of hand. Patient is on treatment with Anti Rheumatoid drugs. She was admitted for evaluation of Rheumatoid arthritis as cause of backache and Poly arthralgia and to rule out other causes. Patient also planned for Physiotherapy for her stiff, painfull multiple joints. Acuteness of her symptoms and chronicity of disease justified evaluation in hospital and treatment under close supervision.

(h) Mrs Pooja Panchal (201803040087) (Annexure 1.19)

Patient admitted with Subacute Low Backache since 15 days not responding to oral medicines and bed rest. Patient had severe shooting pain in the back with inability to walk. Patient admitted for evaluation and management of the backache.

(I) Mrs. Anishaben (to be read as Anisha) (201803030464)(Annexure 1.20)

Patient admitted with Acute Lumbago (acute backache



since 1 day) with radiculopathy. Patient admitted due to presence of shooting pain radiating to Right Lower Limb. Patient on clinical examination shows SLR (Straight Leg Raise Test) +ve. Patient admitted for Physiotherapy IFT (Interferential Therapy) and Intermittent Traction. Patient admitted due to need for evaluation and management of Acute Lumbago.

Since our institute is catering to medical education at undergraduate level our students need to be trained to efficiently handle these cases which will form a major chunk of their clinical practice. Osteoarthritis and polyarthralgia are chronic debilitating conditions which require close monitoring by primary care physician to detect any deterioration and monitoring of drug therapy which may have lot of toxicity. Hence the need of thorough training of medical students in detection and treatment of these ailments.

DERMATOLOGY

At the time of assessment in evening, there were a total of 8 patients in dermatology ward. Assessors had not visited the ward in the morning hours. Details of admitted patients are as follows.

Male Dermatology ward

(a) Patient Chintu Prasad, a case of seborrhoeic capitis with H/o weight loss, seen by the Assessor, was admitted since 3 mar 2018 and not on 5 Mar 2018 as



mentioned by the Assessor (Later on corrected by herself). (Annexure 1.21)

(b) Alam: a case of severe extensive dermatophytosis admitted on 4 Mar 2018 (Annexure 1.22)

(c) Mithun: A case of genital molluscum contagiosum admitted on 4 Mar 2018 (Annexure 1.23)

(d) Kailash: A case of severe disseminated dermatitis with tinea admitted on 5 Mar 2018 (Annexure 1.24)

In Dermatology Female ward, the following patients were present at the time of the assessment.

(a) Narmada: This patient was a case of Asteatotic Dermatitis and was to be discharged. (Annexure 1.25)

(b) Mubina: This is a case of Systemic Sclerosis which is a chronic autoimmune disease with multi-organ involvement leading to considerable mortality and morbidity. She was admitted on 4 mar 2018 in casualty with acute symptoms and treated with corticosteroids, later on shifted to dermatology ward for complete systemic evaluation. Also patient needed consultations from several specialties as well as treatment with potential to have severe adverse effects, hence, admitted for supervised therapy. (Annexure 1.26)

(c) Meera Devi: patient presented on 5 mar 2018 with chronic itchy skin lesions for past 12 years, treated at several places without relief. Patient was severely distressed and had malar rash and



photosensitivity suggestive of SLE. She was hospitalized for confirming the diagnosis before starting potentially toxic immunosuppressive therapy. She was immediately treated with parenteral steroids on the basis of clinical diagnosis for symptomatic relief. (Annexure 1.27)

(d) Kusum Lata Saini: Patient presented with acute exacerbation of chronic urticaria, received parenteral steroids in casualty. After admission in ward she was found to be pregnant. So we needed to avoid corticosteroids as far as possible, hence continuous monitoring was needed for timely intervention, in case of any systemic complications. Hence the need of close monitoring in hospital. (Annexure 1.28)

From the aforesaid it is amply clear that admission of all these cases were essential for close monitoring, evaluation and treatment. Besides these cases would be good teaching material for medical students at undergraduate level.

Hence we comply with the norms and would request you to consider the above facts and rule out the observation made. Institute is having patients more than minimum requirement.

2.	In the morning when assessors entered in the institute at 9:30 am no patients were found n	As evident by the CCTV footage installed at Main Lobby, the assessors entered in the hospital at 9:47 am instead of 9:30 am and at that time there
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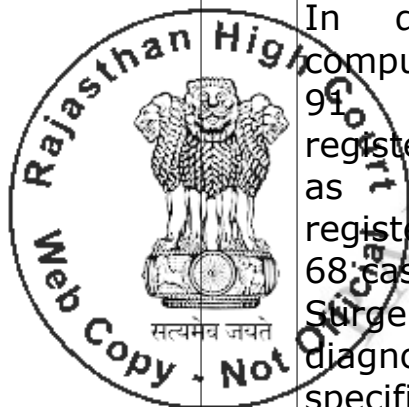
OPD/registration counter. At 2 PM when OPD statistics were checked all statistics was mismatched between computer data and manual data available in the respective OPDs. In dermatology computer shows 91 cases registered where as manual register shows 68 cases. Surgery diagnosis is not specific. Mostly symptoms have been mentioned in the manual register. Today's OPD data is higher than the average daily data as reported in ENT, Ophthalmology, Dentistry Dept.

were more than 150 patients queued at Central Registration. (CCTV photographs attached showing assessors entering the hospital while descent number of patients waiting for registration) (Annexure 2.01, 2.02)

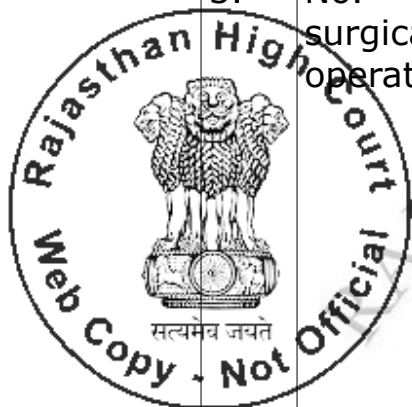
All administrative services, registration, pharmacy, central laboratory are connected through HIMS. As a process, all patients (New and revisit both) need to be registered at Central Registration in main lobby before moving to the respective OPD. In the fully computerized system, data from central registry reflects in the OPD in real time (time lag < 10 seconds) while manual entry in the OPD register is being done only after physical arrival of the patient in that particular OPD. A natural lag of 10 to 15 minutes is justified on account of travelling of data in real time versus travelling of patient from point of central registration to the OPD covering a distance of 200 meters to 300 meters. A diagrammatic flow chart is annexed

Which justify the dermatology computer showing 91 cases registered where as manual register showing 68 cases. (Annexure 2.03)

The specific diagnosis particularly in the surgical streams could be given only after investigations and positive reporting. Hence, on presentation of patients in OPD, symptoms and provisional diagnosis are usually mentioned in the register and software.



		<p>The OPD on 5 Mar 2018 was higher on account of being post festival (Holi) first day of the week. This is a natural course and the pattern of high OPD and consequential build up of IPD may be observed in any medial establishment after major religious festival.</p>	
	<p>3. No. of major surgical operations:5</p>	<p>Actual number of major surgical operations on the day of assessment was 12 which are evident by OT List of the day submitted to the assessors in morning (Annexure 3.01), CCTV footage of Operation Theatre Gallery (Annexure 3.02), Operative notes supported by the investigations and video of the patients in post op (Annexure 3.15)</p> <p>During round of operation theatre area, assessor did verification of OT list and anesthesia/surgery registers and pointed out that all patients in the submitted OT list are not entered in the anesthesia/surgery register. This is important to mention that registers are completed by anaesthetists and surgeons after surgery, hence mismatch in OT list and anesthesia/surgery registers is obvious any point of time before completion of all operations of that day.</p> <p>While during the brief visit of assessor to OT, he was apprised about the physical presence of patients in Pre Op, Post Op and in the theatre undergoing surgeries.</p> <p>Following is the case wise explanation: <u>General Surgery:</u></p>	





a. Mrs Tanu Devi (201803020003) Lap Cholecystectomy (Annexure 3.03)

b. Mrs Vimla Devi (201802200317) Lap Cholecystectomy (Annexure 3.04)

c. Asmin (20180303262) A case of Divarication Recti underwent Open repair with abdominoplasty and umblicoplasty (Annexure 3.05)

d. Rinky (201803030399) Lap Cholecystectomy (Annexure 3.06)

e. Ravinder (2018030200048) right wrist glass injury with radial artery injury and flexor tendon injury - patient underwent radial artery repair and tendon repair. (Annexure 3.07)

F. Rupa ram (201802280001) Left sided PCN diversion (Annexure 3.08)

g. Nur Mohd (201802100022) PCNL with DJ stenting (left) (Annexure 3.09)

Obstetrics and Gynecology

a. Rumali Devi (201803040091) A case of Pyometra, underwent TAH with BSO. (Annexure 3.10)

b. Asha (201710050450) LSCS (twins) (Annexure 3.11)

ENT

a. Wakil (201803010094) a case of CSOM (attico antral disease) with post aural sinus (Left modified radical mastoidectomy)(Annexure 3.12)

Orthopedics

a. Rahul (201802280349) A case of fracture medial malleolus + LISFRANC Fracture Dislocation Left foot underwent ORIF with



		<p>multiple K wire insertion (Annexure 3.13)</p> <p>b. Mohit (201803040038) a case of pseudoarthrosis (It Tibial) underwent dressing with A/K cast application under GA. (Annexure 3.14)</p> <p>Following supporting documents are enclosed</p> <p>a. OT lists of different departments</p> <p>b. Operative notes for each surgery on the day of assessment</p> <p>c. Relevant investigation reports of each case photographs (CCTV Footage)(Annexure 3.15)</p> <p>d. Video recording of patients after operations.</p> <p>Hence, we would request you to accept the patients who underwent operations on the day of assessment and consider 12 major surgeries on the day of assessment.</p>	
4.	No. of minor surgical operations:02	<p>Total 32 minor surgical procedures were performed on the day of assessment. The assessor has considered only 2 cataract cases as minor surgeries, while in our institute cataract surgery is done in the major operation theatre under strict anti-infective measures by latest phaco technique.</p> <p>As Per the phase wise MSR, 2 minor operation theatres for outpatient surgeries are being provided in Surgery OPD and in Casualty. The assessor did not visit these theatres, hence unable to verify the minor surgeries being conducted there. The copy of registers of minor operation theatre is annexed. (Annexure 4.01)</p> <p>Therefore it is requested to please consider minor</p>	

		surgeries as 32 in place of 02.	
5.	No. of Caesarean section: Nil	<p>1 Caesarean section was conducted on the day of assessment delivering twins at around 1:27 pm. The operative notes (Annexure 5.01) along with copy of birth register (Annexure 5.02) are submitted as evidence. The 6 months data of delivery is also submitted of depicting an average of 3.66 deliveries per day. (Annexure 5.03) This is to emphasize that all deliveries are being registered at Nagar Nigam, Sanganer, Jaipur. An online report of Nagar Nigam portal is also annexed. (Annexure 5.04) It is requested to kindly ignore the type error and consider the no. of caesarean section as 01.</p>	
6.	Laboratory investigation data provided by the Institute is inflated	<p>This is to be clarified that the assessors were provided laboratory data containing "number of tests" as desired by him. While in the assessment report (Form AIII) the desirable data in relation to the laboratory is "number of patients". This is to be further clarified that one patient might be subjected to many tests, hence "number of tests" always be much higher than the "number of patients". The assessor inadvertently entered the number of tests data in the number of patient column hence it looks inflated. We hereby submit the laboratory data of 1 month in the format containing</p>	



		both number of patients and number of tests and requesting to kindly waive off the observation on account of inadvertent wrong entry in the Form AIII. (Annexure 8.01)	
8.	Laboratory investigation data provided by the institute is inflated	<p>This is to be clarified that the assessors were provided laboratory data containing "number of tests" as desired by him. While in the assessment report (form AIII) the desirable data in relation to the laboratory is "number of patients".</p> <p>This is to be further clarified that one patient might be subjected to many tests, hence "number of tests" always be much higher than the "number of patients".</p> <p>The assessor inadvertently entered the number of tests data in the number of patient column hence it looks inflated.</p> <p>We hereby submit the laboratory data of 1 month in the format containing both number of patients and number of tests and requesting to kindly waive off the observation on account of inadvertent wrong entry in the Form AIII(Annexure 8.01)</p>	
10.	there is gross discrepancy in the salary among the faculties & resident doctors of same tire	The salary slab of the Institute are in compliance with the norms of the State govt and also consistent with the affiliating University. (Annexure 10.01)	
12.	SR of surgery does not know the admitted patients history & diagnosis, treatment	Dept of surgery has 3 units as per norms. There are 3 wards (1 Female and 2 Male) having 30 beds in each ward. In a ward, different beds are assigned	





to different units.
 Dr jitendra belongs to the Unit I as evident by duty roster and form B submitted to the council.
 The questioned patient was admitted under Unit II which is also evident by the admission sheet of the patient.
 It is quite understandable, that Dr Jitendra might not be knowing full details of the patient pertaining to another Unit. (Annexure 12.01)
 Hence it is requested to waive off the observation.

The office of the Supreme Court Mandated Oversight committee on MCI forwarded representation to the Secretary Medical Council on 20th March, 2018. Pursuant to which the meeting was conducted and it was decided that the renewal may not be granted. The decision of the MCI at Annexure-14 dated 28th March, 2018, reads as under:-

Sub:- Renewal of permission for MBBS course for 3rd batch (150 seats) of Jaipur national University Institute for Medical Science & Research Centre, Jagatpura, Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act,1956 for the academic year 2018-19.

Sir,

I am directed to inform you that an assessment to verify the compliance submitted by the college authorities on the deficiencies pointed on in the assessment report (31st October & 01st November, 2017) with regard to renewal of permission for MBBS course for 3rd batch (150 seats) of Jaipur National University Institute for Medical Sciences & Research Centre, Jagatpura Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act, 1956 for the academic year 2018-19 was carried out by the Council Assessors on 05th March, 2018. The Compliance verification assessment report (05th March, 2018) along with previous assessment report (31st October & 01st

November, 2017) was considered by the Executive Committee of the Council at its meeting held on 24.03.2018 and it was decided as under:

"The Executive Committee of the Council considered the compliance verification assessment report (05th March, 2018), previous assessment report (31st October & 1st November, 2017) along with photographs/Videography and letter/representation dated 07.03.2018 received from the college authorities and noted the following:

1. There is gross disparity in salary among faculty & Residents of the same cadre.
2. Senior Resident of General Surgery does not know history of admitted patients, diagnosis & treatment.
3. Bed Occupancy was 57.33% at 10a.m. on day of assessment.
4. Patients.

The following patients of surgery wards registration No.201802260485 name Vijendar admitted on 26th February 2018 for PCNL diagnosis is right renal stone, IP No.201802090472 name Kishan admitted for haematuria on 1st march 2018. On examination he was alright without any complaints. Rg No.201802100022 Nur Mohmd Admitted for right renal stone for PCNL. SR (Dr. Jitendra) does not know about the patients. IP No. 2018030200022 name Lalban diagnosis urethral stricture admitted for MCU investigation IP No.201802220426 name Kamal Malhotra is operated for Laproscopic appendectomy postoperative day 10 with healthy stitch line. IP No. 2021801030463 Ravi Shankar admitted for AKT toxicity. 201803040020 names Ramdhan admitted for Right cheek sebaceous cyst. IP No.201803030162 name Amir admitted for Enteric fever without any investigation since past five days. In Medicine ward IP 201803030159 name Vinod diagnosis is scabies with upper respiratory tract infection who is clinically alright. In Orthopedic ward 201803030465 Kamal Sahai admitted with Knee pain, 201803030265 Bomaram admitted for poly arthralgia, 201803030275 Amir Khan admitted for right knee pain. 201803030288 name Sikhaben for right knee joint pain, 201803030270 Nathiben admitted for bilateral knee joint pain, 201803040088 Ritaben admitted for pain in right heel, 201803030460 name Ushaben admitted for backache & poly arthralgia. 20180040087 Poojaben, 201803030464 Anishaben admitted for backache. (These patients did not count for bed



occupancy as these cases may be treated as OPD cases. Signed evidence sheet is given) These cases are in significant for teaching purpose for students. In Dermatology ward patients say he is admitted for since last few days but case sheets shows IPD No.20180303030029 name Mr. Chintuprasad on 3rd March only. Female Dermatology ward all four patients were treated with liq parafine, tab. Antihistaminic and vit C tab only, which indicates these patients need not to be admitted.

5. OPD-In the morning when assessor entered in the institutes at 9.30 a.m. no patients were found in OPD/Registration counter. At 2 p.m. when OPD statistics were checked all statistics was mismatched between computer data and manual data available in the respective OPDs. In dermatology computer shows 91 cases registered where as manual register shows 68 cases. Surgery diagnosis is not specific. Mostly symptoms have been mentioned in the manual register. OPD data is higher than the average daily data as reported in ENT, Ophthalmology, Dentistry Departments.

6. There was NIL Normal Delivery & Nil Caesarean Section on day of assessment.

7. There were only 5 Major & 2 Minor Operations for the whole hospital on day of assessment.

8. Data of Laboratory & Radiological Investigations as provided by Institute are inflated.

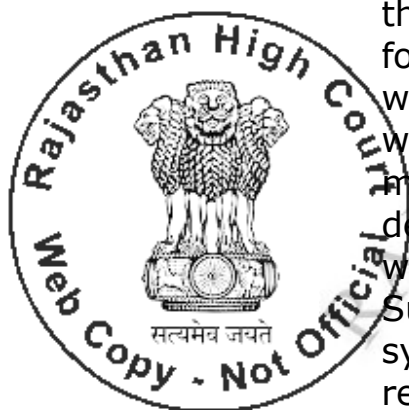
9. Other deficiencies as pointed out in the assessment report.

In view of above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 3rd batch of 150 MBBS students at Jaipur National University Institute for Medical Sciences & Research Centre, Jagatpura, Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act, 1956 for the academic year 2018-2019."

The above decision of the Executive Committee has been approved by the Oversight Committee on 28.03.2018.

Two copies of the assessment report are enclosed herewith.

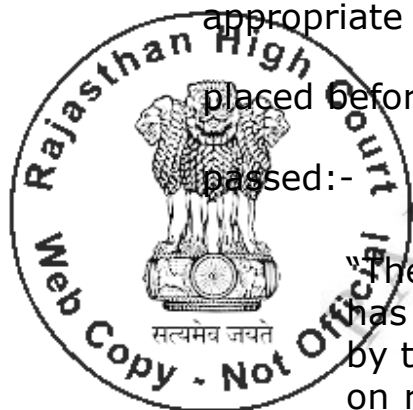
8. The said matter was placed before the Central Government for approval wherein the Central Government vide decision dated 1st May, 2018 has accepted the recommendation by the MCI of



20th March, 2018 and the petitioner was refused renewal third batch of 150 students for the academic Session 2018-2019 which was challenged before this Court by way of writ petition.

8.1. The writ petition was filed on 8th May, 2018 and the matter was placed before the bench on 10th May, 2018. Subsequently, on 16th May, 2018, the matter was ordered to be placed before

appropriate Bench. In that view of the matter, the matter was placed before this Court on 24th May, 2018 wherein following order passed:-



The Chairperson Dr. Sandeep Bakshi is present. He has produced on record the authority letter issued by the Registrar of the University. Reply of the MCI is on record. He does not want to file rejoinder and he is prepared to argue the matter even in absence of lawyer.

In that view of the matter, we are directing the Medical Council of India to send some representative to argue the matter in absence of the lawyer and also the Secretary, Medical Education, Ministry of Central Government to remain present for argument of the matter on 28th May, 2018.

This order will be sent by Chairperson Dr. Sandeep Bakshi to the representatives of both the department today itself by e-mail.

Copy of the order will be given to him during the course of the day.

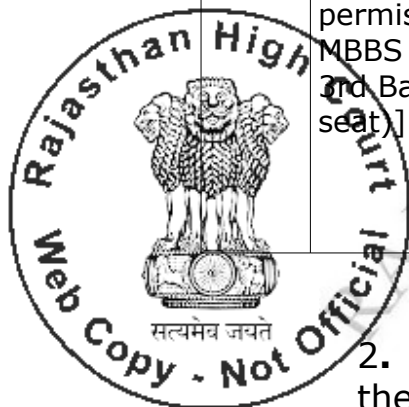
Copy of the order will also be given to both the counsel who are representing the parties; namely Mr. Angad Mirdha & Mr. Ashish Kumar."

9. Ultimately after hearing the party in person and the officers of the respondents, this Court has passed order on 29th May, 2018 which reads as under:-

"1. In view of the fact that initially the Supreme Court vide order dt. 9.10.2017 has given power to MCI to have a surprise inspection, pursuant to which inspection was carried out and Central Government

itself in its meeting held on 15.1.2018, in respect of petitioner College, has observed as under:-

S.No.	Name of College/applicant	Recommendation of Committee
4.	Jaipur National University Inst. Of Medical Sciences & Research Centre, Jagatpura (Pvt.) [Renewal of permission for MBBS course for 2 nd Batch (150 seat)]	Submissions as made by the college at column 4. No deficiency of faculty and residents has been pointed out. The deficiency of Bed Occupancy would also not hold since the assessors have verified at 64.33% against the requirement of 60%. The committee notes that while the assessors have recorded the date of 4 labs in Pathology department in SAF, a deficiency is raised that the college has 3 instead of 4 service labs. The Committee finds no merit in depriving the college of renewal permission. MCI may review its decision.



2. The MCI was required to review its decision in the light of the above and also in view of further order of the Supreme Court which came to be passed on 17.1.2018 which reads as under:-

In the instant case, this Court has directed the Medical Council of India and other respondents to consider the case for the year 2018-2019. The inspection has been made by the Medical Council of India and they have to take a call on the basis of the report as per procedure under the rules. Let the Government of India and Medical Council of India take a decision in the matter by 31st March, 2018 in accordance with law.

In case any of the college is aggrieved by the decision so taken would be at liberty to question it in accordance with the law. Nothing further survives for adjudication in the instant matters. The writ petitions are disposed of in terms of the aforesaid direction.

3. Subsequently, the MCI used their power and on 28.3.2018 another inspection was carried out with pre-determined mind not to renew the permission to the College on following deficiencies:-

1. There is gross disparity in salary among faculty & Residents of the same cadre.
2. Senior Resident of General Surgery does not know history of admitted patients, diagnosis & treatment.
3. Bed Occupancy was 57.33% at 10a.m. on day of assessment.
4. Patients

The following patients of surgery wards registration No.201802260485 name Vijendar admitted on 26th February 2018 for PCNL diagnosis is right renal stone, IP No.201802090472 name Kishan admitted for haematuria on 1st March 2018. On examination he was alright without any complaints. Rg No.201802100022 Nur Mohmd Admitted for right renal stone for PCNL. SR (Dr. Jitendra does not know about the patients. IP No. 2018030200022 nam Lalban diagnosis urethral stricture admitted for MCU investigation. Ip No.201802220426 name Kamal Malhotra is operated for laproscopic appendectomy postoperative day 10 with healthy stitch line. IP No. 2021801030463 Ravi Shankar admitted for AKT toxicity. 201803040020 names Ramdhan admitted for Right cheek sebaceous cyst. IP No.201803030162 name Amir admitted for Enteric fever without any investigation since past five days. In Medicine ward IP 201803030159 name Vinod diagnosis is scabies with upper respiratory tract infection who is clinically all right.

In Orthopedic ward 201803030465 Kamal Sahai admitted with Knee pain, 201803030265 Bomaram admitted for poly arthralgia, 201803030275 Amir Khan admitted for right knee pain. 201803030288 name Sikhaben for right knee joint pain, 201803030270 Nathiben admitted for bilateral knee joint pain, 201803040088 Ritaben admitted for pain in right heel, 201803030460 name Ushaben admitted for backache & poly arthralgia. 20180040087 Poojaben, 201803030464 Anishaben admitted for backache. (These patients did not count for bed occupancy as these cases may be treated as OPD cases. Signed evidence sheet is given) These cases are in significant for teaching purpose for students. In Dermatology ward patients say he is admitted for since last few days but case sheets shows IPD No.201803030029 name Mr. Chintuprasad on 3rd March only. Female Dermatology ward all four patients were treated with liq parafine, tab. Antihistaminic and vit C tab only, which indicates these patients need not to be admitted.

5. OPD-In the morning when assessors entered in the institutes at 9.30 a.m. no patients were found in OPD/Registration counter. At 2 p.m. when OPD statistics were checked all statistics was mismatched between computer data and manual data available in the respective OPDs. In dermatology computer shows 91 cases registered where as manual register shows 68 cases.



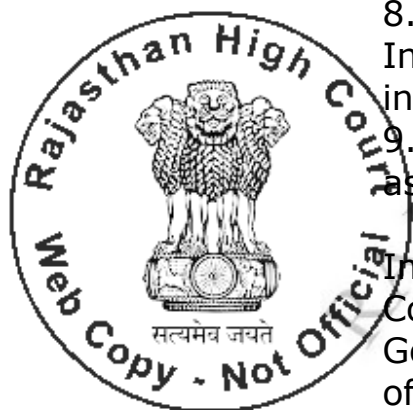
Surgery diagnosis is not specific. Mostly symptoms have been mentioned in the manual register. OPD data is higher than the average daily data as reported in ENT, Ophthalmology, Dentistry Departments.

6. There was NIL Normal Delivery & Nil Caesarean Section on day of assessment.

7. There were only 5 Major & 2 Minor Operations for the whole hospital on day of assessment.

8. Data of Laboratory & Radiological Investigations as provided by Institute are inflated.

9. Other deficiencies as pointed out in the assessment report.



In view of above, the Executive Committee of the Council decided to recommend to the Central Govt. Not to renew the permission for admission of 3rd batch of 150 MBBS students at Jaipur National University Institute for Medical Sciences & Research Centre, Jagatpura, Jaipur, Rajasthan under Jaipur National University, Jaipur u/s 10A of the IMC Act, 1956 for the academic year 2018-2019."

The above decision of the Executive Committee has been approved by the Oversight Committee on 28.03.2018.

4. The representative/officers of the respondents, prima facie supported the finding arrived at by the MCI.

5. We have heard the parties in person.

5.1 Prima facie, the findings which are arrived at by the MCI seem to be contrary to rules, therefore, the same required to be stayed at this stage. In our considered opinion, the findings of the MCI are contrary to rules even the doctor who was Head of the same unit was found to be not knowing all the doctors, therefore, we have used the word pre-determined. We are further of the view that the petitioner- University is doing quite good and after Central Government recommendation, it requires to be given a chance.

6. In that view of the matter, we are inclined to **admit** the matter.

6.1 Hence, the petition is admitted. Notice after admission is not required to be issued as the respondents are duly represented.

6.2 The matter is fixed for final hearing on 9.7.2018.

6.3 In the meantime and till disposal of the petition, the order dt. 1.5.2018 as well as dt. 28.3.2018 both are stayed and respondent no.1 is directed to allow the petitioner -College to admit 150 students in the third batch for the Academic year 2018-19 subject to a rider that if ultimately the petitioner fails in this petition, he will refund all the fees to the students who are admitted pursuant to the order of this court.

6.4 The stay application is accordingly disposed of. The Central Government will act upon this order.

10. However, the same was made subject matter of challenge before the Supreme Court and the Supreme Court in Civil Appeal No. 6000/2018 vide order dated 4th July, 2018, set aside the interim order passed by this Court and directed the High Court to proceed in the matter.

10.1. On 9th July, 2018 Mr. Sharma, counsel for the petitioner requested to take up the matter but because of the heavy board of two Courts namely Chief Justice Court (since sitting at Principal Seat, Jodhpur) and this Court, the matter could not be taken up and the same was kept for 16th July, 2018 & has been heard today.

11. Counsel for the petitioner contended that the report which was submitted pursuant to the inspection carried out in October, 2017, recommendation was forwarded on 15th December, 2017 and thereafter, hearing was given and order came to be passed for reviewing the decision. Thereafter, the Central Government took contrary decision on 1st May, 2018.

12. Counsel for the petitioner further contended that in view of the decision dated 15th January, 2018 it was very clear that the decision was to be reviewed on the basis of documents which were on record and the Central Government while recommending it



clearly observed that renewal is required to be granted but instead of doing it, to the utter shock and surprise of the petitioner, on 5th March, 2018, the MCI made another inspection and increased the total deficiencies from the earlier 4 to 8 which we have reproduced hereinabove in detail.

13. The reply which was given on 7th March, 2018 and received on 9th March, 2018 has also been reproduced but without considering the same, the authority has passed order.

14. The Executive Committee of the Council considered the compliance verification assessment made on 5th March, 2018 so also the previous assessment reports of October-November, 2017 alongwith photograph and videography and letter representation dated 7th March, 2018, received from the College authority.

14.1. It was contended that while considering the report of first time, the authority ought to have considered the explanation which was given by the management pursuant to the inspection on 31st October and 1st November, 2017 and the order was passed which is not sustainable.

15. Counsel for the petitioner also taken us to the provisions of Section 10A which reads as under:-

सत्यमेव जयते

**PERMISSION FOR ESTABLISHMENT OF NEW
MEDICAL COLLEGE, NEW COURSE OF STUDY
ETC.**

10.A (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.

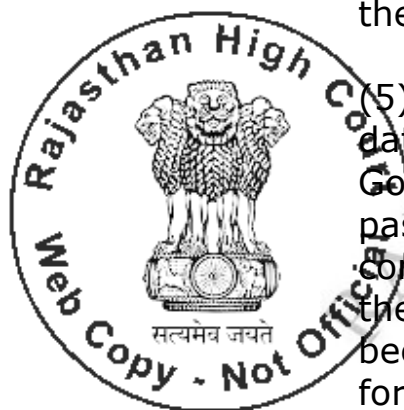
(3) On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

(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 Govt. 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 4 (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 subsection (1).



(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (1), 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."

16. It is contended that inspite of sub-clause 4 proviso, the Central Government without assigning any reason passed the order without hearing the petitioner and without considering the explanation tendered by them and therefore, the order is bad in law.

17. Counsel for the petitioner has also pointed out the addition made by the Government which reads as under:-

"(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."



18. Counsel for the petitioner further contended that pursuant to the order of this Court dated 29th May, 2018, the Central Government vide its order dated 31st May, 2018 has passed following order:-

"No.U-12012/46/2018-ME.I[FTS:3155627]

Government of India

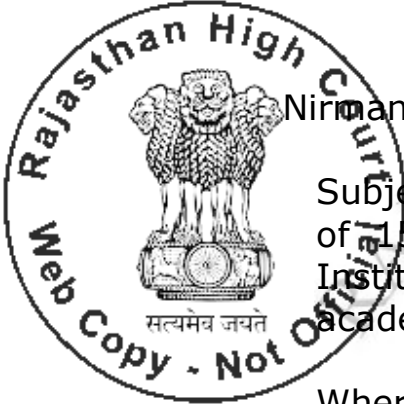
Ministry of Health & Family Welfare

Department of Health & Family Welfare

Nirman Bhawan, New Delhi-11 Dated the 31s, May, 2018

ORDER

Subject: Renewal Permission for admission of 3rd batch of 150 MBBS students at Jaipur National University Institute of Medical Sciences & Research, Jaipur for the academic year 2018-19-Reg.



Whereas the Ministry of Health & Family Welfare vide order dated 01.05.2018 disapproved the scheme under section 10 A of IMC, Act 1956 for Renewal permission for 3rd Batch (150 MBBS seats) at Jaipur National University Institute of Medical Sciences & Research Centre, Jaipur for the academic year 2018-19;

Whereas Jaipur National University Institute of Medical Sciences and Research Center, Jaipur has filed a Writ Petition No. 10103 of 2018 in the Hon'ble High Court of Rajasthan, Bench at Jaipur praying among other things for setting aside and quashing the Order dated 01.05.2018 issued by the Ministry of Health and Family Welfare. It was also prayed to direct the Ministry to issue appropriate orders granting Letter of Permission for admission of 150 MBBS seats in the 3rd Batch (2nd Renewal) for the academic year 2018-19 to the Petitioner College;

Whereas the Hon'ble High Court vide interim order dated 29.05.2018 directed as under:-

In the meantime and till disposal of the petition, the order dt. 01.05.2018 as well as dt. 28.012018 both are stayed and respondent No.1 is directed to allow the petitioner college to admit 150 students in the third batch for the Academic year 2018-19 subject to a rider that if ultimately the petitioner fails in this petition, he will refund all the fees to the students who are admitted pursuant to the order of this court."

Now, therefore, in compliance of the direction of the Hon'ble High Court of Rajasthan, the Ministry permits

Jaipur National University Institute of Medical Sciences and Research Center, Jaipur provisionally to conduct the MBBS course (3rd batch of 150 seats) for the academic year 2018-19, subject to following terms and conditions:-

i) This permission is valid for one year and for admitting only one batch of 150 MBBS seats during the academic year 2018-19. Admission in next batch of students for the year 2019-20 will be made only after renewal permission of the Central Govt.

ii) Admissions made in violation of the above conditions will be treated as irregular and shall be liable for action under IMC Act, 1956 & Regulations made thereunder.

iii) The aforesaid permission shall be subject to further orders to be passed by Hon'ble High Court of Rajasthan in this Writ Petition.

iv) If ultimately the petitioner fails in this petition, he will refund all the fees to the students who are admitted pursuant to the order of the court.

v) The Institute/college shall make it clear to the students, who are admitted, that their admission is subject to the result of this writ petition and SLP, if any, filed by MCI."

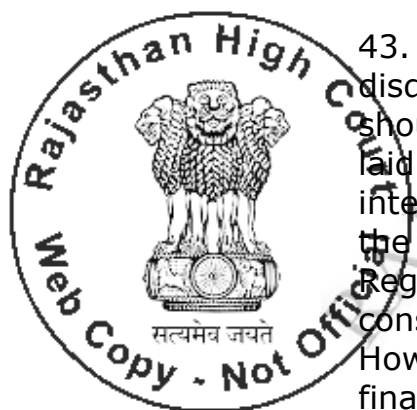


19. However, in view of the statement made on 14th June, 2018, before the Supreme Court that they will not admit the students therefore, no students were admitted and ultimately vide order dated 4th July, 2018, order of this Court was set aside but the order dated 31st May, 2018 was already issued, therefore, at the most it could be assumed to have been kept under abeyance and recognition was already granted by the Central Government on 31st May, 2018.

19.1. He has also pointed out that re-schedule has been issued for the registration of medical students admission and re-scheduled second round seat allotment was also made which we have reproduced above.

20. Counsel for the petitioner to make his point justified, has relied upon following decisions on the point of striking down the rules which have been amended and are going contrary to the Rules.

"1. Global Energy Ltd. and Anr. vs. Central Electricity Regulatory Commission (2009) 15SCC 570



43. A legislative policy providing for qualification or disqualification of a person for obtaining a trading licence should not be vague or uncertain. Parameters must be laid down therefore for determining the financial integrity, reputation, character, efficiency and honesty of the applicant. An explanation appended to Clause (f) of Regulation 6A points out various aspects that may be considered while determining the said criteria.

However, what should be the criteria in regard to financial integrity, character, reputation, etc. have not been defined. How and in what manner the said criteria are required to be ascertained have not been laid down, the criteria are subjective ones.

44. A disqualifying statute, in our opinion, must be definite and not uncertain; it should not be ambiguous or vague. Requisite guidelines in respect thereof should be laid down under the statute itself. It is well settled that essential legislative function cannot be delegated.

45. It has been accepted by Mr. Tripathi that the explanation appended to Clause (f) of Regulation 6A is not exhaustive.

46. It is now a well settled principle of law that essential legislative functions cannot be delegated. The delegatee must be furnished with adequate guidelines so that arbitrariness is eschewed. On what basis and in particular, keeping in view the possible loss of reputation and consequently the business of an applicant for grant of licence would suffer, it was obligatory on the part of the Parliament to lay down requisite guidelines therefore.

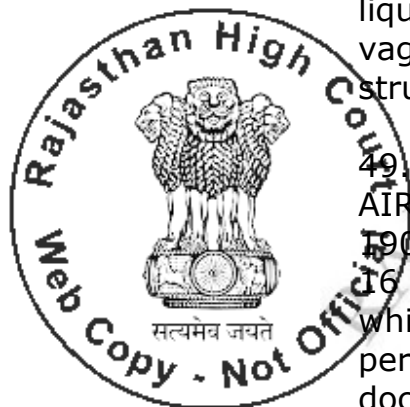
47. The factors enumerated in the 'Explanation' appended to Clause (f) of Regulation 6A are unlimited. For determining the question as to whether the applicant is a fit and proper person, a large number of factors may be taken into consideration. It for all intent and purport would be more than the technical requirement, capital adequacy requirement and credit worthiness for being an 'electricity trader' as envisaged under Section [52](#) of the Act.

An applicant usually would be a new applicant. It is possible that there had been no dealings by and between

the applicant and the licensor. Each one of the criteria laid down in the explanation refers to creditworthiness.

48. In State of Kerala and Ors. v. Unni and Anr.: AIR2007SC819 , this Court has held:

When a subordinate legislation imposes conditions upon a licensee regulating the manner in which the trade is to be carried out, the same must be based on reasonable criteria. A person must have means to prevent commission of a crime by himself or by his employees. He must know where he stands. He must know to what extent or under what circumstances he is entitled to sell liquor. The statute in that sense must be definite and not vague. Where a statute is vague, the same is liable to be struck down.



49. In State of Rajasthan and Ors. v. Basant Nahata : AIR2005SC3401 Section 22-A of the Registration Act, 1908 which was inserted by Rajasthan Amendment Act 16 of 1976 was struck down, holding: (1) The executive while making a subordinate legislation should not be permitted to open new heads of public policy, (2) the doctrine of public policy itself being uncertain cannot be a guideline for anything or cannot be said to be providing sufficient framework for the executive to work under it, (3) Essential functions of the legislature cannot be delegated and it must be judged on the touchstone of Article 14 and Article 246 of the Constitution, and (4) only the ancillary and procedural powers can be delegated and not the essential legislative point."

2. State of Kerala and Ors. vs. Unni and Anr. (2007)2 SCC 365

32. If by reason of the rule making power, the State intended to impose a condition, the same was required to be reasonable one. It was required to conform to the provisions of the statute as its violation would attract penal liability. It was expected to be definite and not vague. Indisputably, the State having regard to the provisions of Article 47 of the Constitution of India, must strive hard to maintain public health. While however, imposing conditions in regard to the prescription of norms, it was expected of the State to undertake a deeper study in the matter. It should have undertaken actual experiments. It should have specified mode and manner in which the percentage of ethyl alcohol can be found out by the licensee. A subordinate legislation can be questioned on various grounds. It is also well-known that a subordinate legislation would not enjoy the same degree of immunity as a legislative act would. [See Vasu Dev Singh and Ors. v. Union of India and Ors. : 2006 (11) SCALE 108].

50. A person may be held to be guilty even if the contents of ethyl alcohol exceed 8.1 % marginally. He must, therefore, be in a position to know, as to what extent he can go and to what extent he cannot. The matter cannot, thus, be left to an act of nature. A penal provision must be definite. Unless the statutory intention otherwise provides, existence of mens rea must be read into a penal statute. It must be a deliberate act and not an unintentional one, unless the statute says so explicitly or by necessary implication. The Act or the Rules do not say either. It is in that sense vague or unreasonable.

51. Once, thus, it is found to be ex facie unreasonable and unworkable, the court would not hesitate to strike down the said rule. We do so."

21. On the point of reasons to be recorded by MCI as well as the Central Government he has relied upon the following decision:-

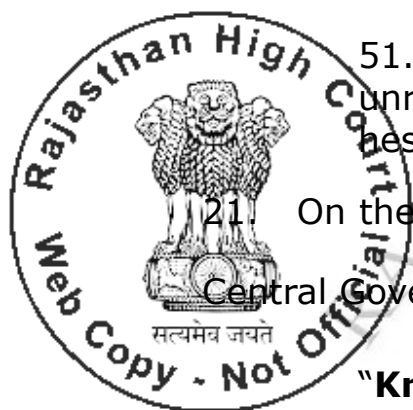
"Kranti Associates Pvt. Ltd. and Anr. vs. Sh. Masood Ahmed Khan and Ors. (2010) 9SCC 496

12. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognized a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak and Ors. v. Union of India and Ors. reported in : AIR 1970 SC 150.

14. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report)

15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.

22. He contended that the order passed herein is not only in violation of principle of natural justice by the Central Government



but even by the MCI without considering the reply which has been given by the petitioner-University. The thin distinction which has been pointed out is that there was no requirement of complying with the removal of deficiency. The contention of the petitioner is that there is no deficiency which has been accepted by the Central Government in its order dated 15th January, 2018 but with a view to meet out the earlier inspection, with pre-determined mind they carried out another inspection by which they have achieved their desire by confirming their earlier decision which is required to be viewed seriously and the same cannot be used for rejecting the approval for the purpose of admission in medical profession.



23. Counsel for the petitioner has relied upon following decisions:-

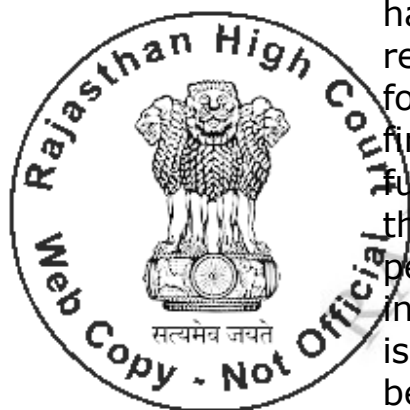
"1. Apollo Institute of Medical Sciences and Research and Ors. vs. Union of India (UOI) and Ors. (2017)16SCC 649

7. Having considered the rival submissions, we have no hesitation in taking the view that the Hearing Committee, as well as the Competent Authority of the Central Government, have shown complete disregard to the fact situation and moreso when they have found that the infrastructure and academic requirements were fully in place in so far as the Petitioners' college is concerned. Infact, we find that the impugned order acknowledges the fact that the Petitioners' college is a compliant college in respect of infrastructure and academic matters. In such a situation, we are at a loss to discern as to what weighed with the Hearing Committee and Competent Authority of the Central Government to prohibit the Petitioners' college from admitting students in the MBBS course for the academic session 2017-18. No tangible reason whatsoever has been assigned by the said authorities in that regard, leave alone any reason.

8. We have no hesitation in observing that the approach of the statutory authorities is bordering on abdication of their statutory duty and is against the letter and spirit of the direction given by this Court

on the earlier occasion to reconsider the case of the Petitioners' college afresh on the basis of material available on record. Admittedly, the Petitioners' college has started functioning from the academic session 2016-17, on the basis of a conditional Letter of Permission. The conditions specified therein have been substantially fulfilled in all respects including infrastructure and academic requirements. Therefore, we allow this petition and the application filed by the Petitioners in the larger public interest.

9. Considering the fact that the Petitioners' college has fulfilled the infrastructure and academic requirements and has already operated the college for the academic session 2016-17 by admitting the first batch of students in the MBBS course and further, even the Competent Authority has noticed that there are no major deficiencies, we allow this petition and the application filed by the Petitioners in the larger public interest. We are also inclined to issue further directions to the Respondents as have been issued in the judgment of *Dr. Jagat Narain Subharti Charitable Trust and Anr. v. Union of India and Ors.*, delivered on 30th August, 2017."



2. Saraswati Educational Charitable Trust and Ors. vs. Union of India (UOI) and Ors. (2017) 16 SCC 637

14. Considering the above, we find that the inspection for issuance of Letter of Permission for academic session 2017-18 was duly carried out on 18 and 19th November, 2016. We reject the contention raised by the Respondents that no inspection in relation to academic session 2017-18 has been carried out as of now. Indeed, the Petitioners objected to the second surprise inspection intended on 21st and 22nd December, 2016 as the same was after the cut off date 15th December, 2016. The purpose for which the second surprise inspection became necessary, when the earlier report was pending consideration and that too after the cut off date 15th December, 2016, has not been explained or noted either by the Executive Committee in its meeting held on 13th January, 2017 or for that matter by the Hearing Committee and more so by the Competent Authority of the Central Government. Significantly, it is not a case where the college officials prevented the inspecting team from entering the college. The Petitioner college only placed their objection on record as per the advice given to them that such inspection by the MCI after the cut off date was not permissible. The inspecting team chose to leave the college without doing any inspection. The

Competent Authority, however, mechanically acted upon the recommendation of the MCI to debar the Petitioner college for two years and authorised the MCI to encash the Bank Guarantee of Rs. 2 crores vide order dated 31st May, 2017.

15. The said order dated 31st May, 2017, passed by the Ministry has been assailed in the present writ petition. As noted earlier, the writ petition was heard along with the connected cases on 1st August, 2017 on which date this Court directed the Central Government to reconsider the matter afresh and record reasons. Pursuant to the said directions, the Petitioners submitted representation before the Central Government and also participated in the hearing before the Hearing Committee on 3rd August, 2017. The Hearing Committee without reference to the relevant matters, once again reiterated the position taken earlier, that the Petitioner college did not permit second inspection to happen. Neither the purpose of second inspection has been elaborated nor any justification has been given by the Hearing Committee as to why the second inspection was required and moreso when the first inspection was done about a month earlier. The Central Government has mechanically accepted the recommendation of the Hearing Committee and has passed the impugned decision on 10th August, 2017, as can be discerned from the observations in paragraphs 17 and 18 of the impugned decision.

16. We have no hesitation in taking the view that the Hearing Committee as well as the Central Government have failed to consider all the relevant aspects of the matter and the conclusion reached by the said authorities is, on the face of it, without application of mind, if not perverse. We are conscious of the fact that there is nothing in the Regulations which expressly or for that matter by implication prohibits the MCI from undertaking multiple inspections. However, when that action is questioned, it is expected that the MCI must offer some justification for the second surprise inspection when its Assessors had already carried out that exercise recently on 18th and 19th November, 2016 and submitted an elaborate report running into 36 pages in the prescribed format in that regard (Annexure-P/12). The Hearing Committee as well as the Competent Authority of the Central Government were expected to examine this aspect of the matter before taking any final decision, especially when the inspection report on record did not point out any deficiency except the marginal deficiency of faculty



of 1.5% and residents of 6.52% which were obviously within the permissible norms.”

3. Rajiv Memorial Academic Welfare Society and Ors. vs. Union of India (UOI) and Ors. (2016)11SCC 522

18. With this we come to the deficiencies which are pointed by the High Court in para 14 of the impugned judgment and taken note of above. As far as first deficiency is concerned, it is stated that on the previous day (that is day prior to the date of inspection) there was nil normal delivery and nil caesarean section. Likewise, second deficiency which is pointed out is to the effect that in the month of January, there were only 45 total deliveries and in the month of April there were only 38 deliveries which were inadequate and further special investigation like Ba, IVP were not carried out. The Hospital cannot be faulted with, in case there was no normal delivery or no caesarean section on a particular day. That can hardly be treated as any deficiency. Same would be the position in respect of number of deliveries in the month of January and April. Insofar as third deficiency is concerned, it is clarified by the learned Senior Counsel for the Society that the Hospital is having sonography and ultrasound facilities etc. and, therefore, Ba/TVP are not carried out and, it would be hardly of any significance.”



4. Kanachur Islamic Education Trust (R) Vs. Union of India (UOI) and Ors. (2017)15SCC702

As the impugned order dated 10.08.2017 would reveal, it is apparent that for all practical purposes, the Hearing Committee/Central Government did not undertake a dispassionate, objective, cautious and rational analysis of the materials on record and in our view, returned wholly casual findings against the Petitioner's college/institution. This order thus has to be held, not to be in accord with the spirit and purport of the order dated 01.08.2017 passed by this Court. Suffice it to state, the order does not inspire the confidence of this Court to be sustained in the attendant facts and circumstances.

20. No endeavour whatsoever, in our comprehension, has been made by the Respondents and that too in the face of an unequivocal direction by this Court, to fairly and consummately examine the materials on record in details before recording a final decision on the issue of confirmation or otherwise of the LOP

granted to the Petitioner's college/institution as on 12.09.2016. True it is that the Regulations do provide for certain norms of infrastructure to be complied with by the applicant college/institution for being qualified for LOP depending on the stages involved. This however does not obviate the inalienable necessity of affording a reasonable opportunity of hearing to the person or the college/institution concerned vis--vis the scheme for establishment of a college before disapproving the same. The manner in which the Respondents, in the individual facts of the instant case, have approached the issue, leads to the inevitable conclusion that the materials on record do not support determinatively the allegation of deficiency, as alleged. The Respondents having failed to persuasively establish the said deficiencies, as noted in the impugned order dated 10.08.2017, in spite of opportunities available including the one granted by this Court, such a determination cannot be sustained in the facts and circumstances of the case. We are of the considered opinion that in view of the persistent defaults and shortcomings in the decision making process of the Respondents, the Petitioner's college/institution ought not to be penalised. Consequently, on an overall view of the materials available on record and balancing all relevant aspects, we are of the considered opinion that the conditional LOP granted to the Petitioner's college/institution on 12.09.2016 for the academic year 2016-17 deserves to be confirmed. Having regard to the progression of events, the assertions made by the Petitioner in the representations countering the deficiencies alleged, the observations/views expressed by the Oversight Committee in its communication dated 14.05.2017 and the DGHS in the hearing held on 17.01.2017, which considerably dilute/negate the findings with regard to the deficiencies as recorded by the assessors of the MCI in the inspections conducted, we hold that the Petitioner's college/institution, as prayed for, is also entitled to LOP for the academic year 2017-18. We order accordingly. However, as the Act and Regulations framed thereunder have been envisioned to attain the highest standards of medical education, we consider it expedient to permit the Central Government/MCI to cause inspection of the Petitioner's college/institution in case of genuine necessity and as warranted in law besides adopting other initiatives, as mandated by the Act and Regulations from time to time. In view of this determination, the date of counselling for the admissions to the course involved for the academic year 2017-18 qua the Petitioner's college shall stand extended till 05.09.2017. The impugned



order dated 10.08.2017 is thus set aside. The writ petition is allowed. We make it clear that the decision rendered and the directions issued are in the singular facts and circumstances of the case. I.A. No. 73463 of 2017 also stands disposed of."

5. Dr. Jagat Narain Subharti Charitable Trust and Ors. vs. Union of India (UOI) and Ors. (2017)16SCC 666



12. Having considered the rival submissions and after perusing the records, we are more than convinced that the impugned communication dated 14.08.2017 cannot stand the test of judicial scrutiny. As can be discerned from paragraph 17, essentially, three factors have weighed with the Hearing Committee and the competent authority of the Central Government while debarring the Petitioner college for two academic sessions. The first is about the deficiencies of faculty, residents, OPD and Bed Occupancy. The Petitioners had offered explanation in relation to each of these deficiencies. The OC, after considering the explanation, had opined that the Petitioners had shown sufficient cause and that the deficiencies, if any, were within the permissible norms. This is evident from the communication of the OC dated 14.05.2017. Neither the Hearing Committee nor the competent authority of the Central Government has dwelt upon the stated explanation given by the Petitioners and which had found favour with the OC, as noted in its communication dated 14.05.2017. No finding has been recorded by the Hearing Committee or the competent authority of the Central Government that the said view expressed by the OC is inappropriate or incorrect. Notably, in paragraph 17 of the impugned communication, the competent authority of the Central Government has recorded the observation of the Hearing Committee that inspection carried out on 26/27.10.2016 was just prior to Diwali and was bound to reflect on the attendance of the Faculty, Residents and OPD as well as Bed Occupancy. The competent authority has stopped at that. It has not rejected the said explanation as incorrect or bogus. On the other hand, the impression gathered from the contents of paragraph 17 of the impugned communication is that the Hearing Committee as well as the competent authority of the Central Government has not rejected the explanation offered by the Petitioners' college. If that is so, deficiency in respect of Faculty, Residents, OPD and Bed Occupancy cannot be held

against the Petitioners moreso when the OC, on the basis of the same material, had opined that the deficiency regarding faculty at the relevant time was only 6.15%, which was within the norms. Even the deficiency of residents was answered in favour of the Petitioners by observing that there was no deficiency. The explanation of the college with regard to OPD attendance and Bed Occupancy was found to be reasonable, sufficient and valid by the OC. Accordingly, the first aspect highlighted in paragraph 17 in relation to the deficiency of Faculty, Residents, OPD and Bed Occupancy, cannot be held against the Petitioners.



13. Reverting to the main issue, which presumably weighed with the Hearing Committee and the competent authority of the Central Government, about the non fulfillment of qualifying criteria regarding ownership of 20 acres land, even this is a non-existent issue. Going by the observations in paragraph 17, it is obvious that the Hearing Committee has recorded a prima facie opinion that the college owns 20 acres of land but it wanted the competent authority of the Central Government to ponder over the said aspect in depth as full details regarding land were available with the Ministry. The competent authority of the Central Government, however, has not analysed any aspect regarding the land record depicting the ownership of 20 acres of land. Significantly, the Petitioners relied on the recent decision of the Revenue Authority which clinches the issue regarding ownership and area of the land. In that, the Court Assistant Collector, First Class, Vikas Nagar, Dehradun has passed a detailed judgment on 25.07.2017 to answer the dispute brought before it Under Section 143 of the Zamindari Abolition and Land Reforms Act and has held that the lands referred to in the said decision are non-agricultural lands and entered in the name of the Petitioners as owners in the revenue record. We are not called upon to examine the correctness of this decision nor we may be understood to have concluded that issue. The fact remains that this judgment was placed before the competent authority. The said decision has been marked as annexure P-29 in Writ Petition (Civil) No. 681 of 2017. From the said decision, it is indisputable that the Petitioners have been declared as owners of the land referred to in the said case Nos. 100 and 101 of 2016-17. As stated earlier, even the Hearing Committee has not expressed any adverse opinion on this account. Rather, the Hearing Committee has *prima facie* noted that the college owns 20 acres of land. The competent authority

has palpably failed to analyse the relevant record regarding land ownership of the college, as is evident from the observation contained in paragraph 17 of the impugned decision.

14. The third aspect noted in the impugned decision in paragraph 17 is about the non-furnishing of information regarding land ownership in Form-5. We are at a loss to appreciate as to on what basis the Hearing Committee and the competent authority of the Central Government have found the stand taken by the Petitioners in that behalf as an incorrect submission. We find that the Petitioners had submitted applications for permission to establish the medical college initially in 2013 followed by another application on 30.08.2014 and lastly on 31.08.2015. On the basis of the last application dated 31.08.2015, the Petitioners were granted permission to start the medical college from the academic session 2016-17 on conditions specified in the permission. At best, it can be said that the said application dated 31.08.2015 was not for establishment of college for the academic session 2014-15. But it is indisputable that the letter of permission was granted to the Petitioners for the academic session 2016-17 on the basis of their application dated 31.08.2015. Having said this, it must follow that the application preferred by the Petitioners under consideration was made before 16.10.2015. The requirement to submit information regarding ownership of land in Form-5 came into force after the amendment notification dated 16.10.2015 bearing No. MCI-34/41/15-Med./142035. In addition, the Petitioners have rightly pointed out that the information regarding ownership of land as was furnished by them was dependent on the communication issued by the D.M. being annexure P-5 in Writ Petition (Civil) No. 513 of 2017, which contains all the requisite details as were required for the purpose of Form-5.

Thus, there has been substantial compliance of the said requirement by the Petitioners. Assuming that the notification dated 16.10.2015 applied even to the proposal of the Petitioners, suffice it to observe that failure to furnish information in the prescribed Form-5 cannot be held against the Petitioners. In any case, that is not a deficiency relating to infrastructure or academic matters as such, which may require a different approach.

Accordingly, even this aspect does not detain us from concluding that the impugned decision of the competent authority suffers from the vice of non-application of mind, if not perverse.



15. This leaves us with no other option but to conclude that the reconsideration of the matter by the Central Government was a mere formality in this case. No sincere effort has been made by the competent authority of the Central Government to analyse the material placed on record. This is nothing short of abdication of statutory duty. That cannot be countenanced especially when the matter was sent back to the competent authority by this Court vide order dated 01.08.2017 for recording reasons.



16. As no other deficiency has been noted by the competent authority of the Central Government in the impugned decision dated 14th August, 2017, and that the three factors which weighed with the competent authority having been found to be palpably untenable and, more particularly, in spite of this Court having called upon the competent authority to reconsider the matter with a hope that all the grievances of the Petitioners would be properly dealt with, it opted to pass a cryptic and mechanical order which suffers from the vice of non application of mind, if not perverse. The only course open for us is to allow these writ petitions by not only setting aside the impugned decision dated 14th August, 2017, but also directing the Respondents to permit the Petitioner-college to admit up to 150 students for the academic session 2017-18, as was permitted for the academic session 2016-17. We are conscious of the Regulation providing for the cut-off date to accord permission for establishment of a new college or for renewal of the permission to impart MBBS course, including the decision of this Court mandating adherence to the said cut-off date. Notwithstanding such stipulation, we are persuaded to direct the concerned authorities to allow the Petitioner-college to admit up to 150 students until 05.09.2017, in the peculiar facts of the present case and in exercise of our plenary power Under Article [142](#) of the Constitution of India to do complete justice. In other words, we are inclined to relax the cut-off date qua the Petitioners and issue directions to the concerned authority, being convinced that none of the three factors which weighed with the competent authority is sustainable and that the Petitioner-college has already admitted students to the first year MBBS course for the academic session 2016-17 after the recommendation of the OC in that behalf and has complied with the conditions for grant of such permission by the competent authority."

6. IQ City Foundation and Ors. vs. Union of India (UOI) and Ors. (01.08.2017 – SC) (2017) 16 SCC 249

30. Having said this, we are not inclined to close the matter. The Petitioners have been running the College since 2013-14. We have been apprised that students who have been continuing their education shall continue for 2017-18. As we find the order of the Central Government is not a reasoned one. It is obligatory on its part to ascribe reasons. For the said purpose, we would like the Central Government to afford a further opportunity of hearing to the Petitioners and also take the assistance of the newly constituted Oversight Committee as per the order dated July 18, 2017 passed by the Constitution Bench in Writ Petition (Civil) No. 408 of 2017 titled Amma Chandravati Educational and Charitable Trust and Ors. v. Union of India and Anr. and thereafter take a decision within two weeks. Needless to say, the decision shall contain reasons. We repeat at the cost of repetition that the decision must be an informed one."



24. He contended that the view taken by the both the authorities is required to be quashed and set aside and the prayer made by the petitioner for renewal of third batch for admission 150 students is required to be granted.

25. Taking into consideration, he contended that the second inspection was not warranted and even if it is allowed to be conducted, the explanation tendered by the petitioner institute has to be given weightage or considered.

25.1. He has also emphasised that on day of assessment, the patients referred are 899 which is matching with the requirement of 750 patients and every document wherein deficiency has been pointed out was supported by the complete document subsequently because of management was having manual record, there was a time gap.

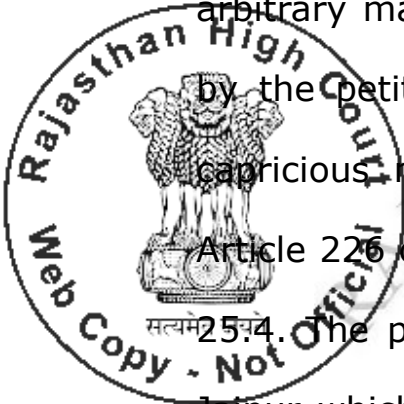
25.2. Even the two birth certificates of twins born in the hospital on 5th March, 2018, therefore, the finding of the authority for not granting approval is not proper but are contrary to record.

25.3. In support of his contention, he has taken us to the reply and he has contended that minimum requirement was fulfilled and the rejection or refusal by the MCI and Central Government is in arbitrary manner and the huge investment which has been made by the petitioner-College has been ruined in arbitrary and very capricious manner which is not permissible and powers under Article 226 of the Constitution of India is required to be exercised.

25.4. The petitioner-College is part of Jaipur National University, Jaipur which according to the survey conducted by "India Today" Magazine dated 2nd July, 2018, is amongst top five Universities having maximum number of Phd. awarded. According to 2017 survey also in top 50 private Universities name of the petitioner-College finds place at number 17. Though the petitioner University was established in 2007 whereas the other University though established in 2002 and 2003 much prior to the petitioner are below the rank awarded to the petitioner-College. Thus, it is clear that from any angle the petitioner-College is one of the good institution of State of Rajasthan and city of Jaipur.

26. In that view of the matter, he contended that the decision taken by Medical Council of India is not justified.

27. Counsel for the respondent MCI has drawn our attention to the law of the Supreme Court and contended that the High Court has limited power and MCI has unfettered power to take the decision being a statutory authority and they would adhere to time schedule as prescribed by the Supreme Court and he relied on the following decisions to support his various contentions:-



1. Ashish Ranjan & Ors. vs. Union of India & Ors.; (2016) 11 SCC 225.

1. Applications for impleadment are allowed. Heard learned Counsel for the Petitioner, Mrs. Pinky Anand, learned additional solicitor general for the Union of India and Mr. Gaurav Sharma for the Medical Council of India.

2. Mr. Gaurav Sharma, has filed the notifications issued by the Medical Council of India with the previous sanction of the Central Government. The said Notification reads as under:



"In exercise of the powers conferred by Section 10(A) read with Section 33 of the Indian Medical Council Act, 1956(102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following Regulations to further amend the "Establishment of Medical College Regulations, 1999" namely:

(i) These Regulations may be called the 'Establishment of Medical College Regulations, (Amendment), 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the Establishment of Medical College Regulations, 1999', in SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA' the following shall substituted as under:

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES/RENEWAL OF PERMISSION AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15th June to 7th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India.	By 15th July
3.	Technical Scrutiny, assessment and Recommendations for Letter of Permission by the Medical Council of India.	By 15th December
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 31st January.
5.	Final recommendations for the Letter of Permission by the Medical Council of India.	By 30th April
6.	Issue of Letter of Permission by the Central Government.	By 31st May



Note 1. In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

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In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102) of 1956, the Medical Council of India with the previous sanction of the Central Government, hereby makes the following Regulations to further amend the "Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (Including a Postgraduate Course of Study or Training) Regulations 2000", namely:

1(i) These Regulations may be called the "Opening of a New or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including Postgraduate Course of Study or Training (Amendment) Regulations 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In 'Part II - SCHEME FOR PERMISSION OF THE CENTRAL GOVERNMENT TO INCREASE THE ADMISSION CAPACITY IN ANY COURSE OF STUDY OR TRAINING (INCLUDING POST GRADUATE COURSE OF STUDY OR TRAINING) IN THE EXISTING MEDICAL COLLEGES/INSTITUTIONS" of the 'Opening of a New or Higher Course of Study or Training (Including Postgraduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (Including a

Postgraduate Course of Study or Training) Regulations 2000", after point No. 7 the following shall be added:

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR INCREASE OF ADMISSION CAPACITY IN MBBS COURSE/RENEWAL OF PERMISSION FOR INCREASE OF SEATS AND PROCESSING OF THE APPLICATIONS BY, THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15th June to 7th July (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India.	By 15th July
3.	Technical scrutiny, assessment and Recommendations of Letter of Permission by the Medical Council of India	By 15th December
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 31st January
5.	Final recommendations for the Letter of Permission by the Medical Council of India	By 30th April
6.	Issue of Letter of Permission by the Central Government	By 31st May



Note 1; In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.

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In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government, hereby makes the following Regulations to further amend the 'Regulations on Graduate Medical Education, 1997', namely:

1.(i) These Regulations may be called the 'Regulations on Graduate Medical Education, 2015.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the 'Regulations on Graduate Medical Education, 1997', Appendix E shall be replaced as under:

TIME SCHEDULE FOR COMPLETION OF THE ADMISSION PROCESS FOR FIRST MBBS COURSE

S. No.	Schedule for Admission	Seats to be filled up by the Central Government through the All India Entrance Examination	Seats to be filled up by the State Govt./Institution.
1.	Conduct of Entrance Examination	Between 1st to 7th May	Between 10th to 17th May
2.	Declaration of the Result of the Qualifying Exam/Entrance Exam.	By 1st June	By 1st June
3.	1st round of counselling/admission	To be over by 25th June	Between 6th July to 15th July
4.	Last date for joining the allotted college and the course	By 5th July	By 22nd July
5.	2nd round of counselling/admission for vacancies	Between 23rd July to 30th July	Between 10th to 22nd August
6.	Last date of joining for the 2nd round of counselling/admission	By 9th August	By 28th August
7.	Commencement of academic session/term	1st of August	1st of August
8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason.		By 31st August



Note:

1. All India Quota Seats remaining vacant after last date for joining, i.e. 9th August will be deemed to be converted into state quota.
2. Institute/college/courses permitted after 31st May will not be considered for admission/allotment of seats for current academic year.
3. In any circumstances, last date for admission/joining will not be extended after 31st August.

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In exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following Regulations to further amend 'The Opening of a New or Higher Course of Study or Training (including Post Graduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including a Post Graduate Course of Study Or Training), Regulations 2000' namely:

1(i) These regulations may be called 'The Opening of a New or Higher Course of Study or Training (including Post Graduate Course of Study or Training) and increase of Admission Capacity in any Course of Study or Training (including a Post Graduate Course of Study Or Training (Amendment) Regulations 2015'.

(ii) They shall come into force from the date of

their publication in the Official Gazette.

2. In 'The Opening of a New or Higher Course of Study or Training (including Postgraduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Post Graduate Course of Study Or Training), Regulations, 2000', the following additions/modifications deletions/substitutions shall be indicated therein:

3. In the Schedule and Note in 'The Opening of a New or Higher Course of Study or Training (including Post Graduate Course of Study or Training) and increase of Admission Capacity in any course of Study or Training (including a Post Graduate Course of Study or Training), Regulations, 2000', after Appendix-II, the schedule included vide notification dated 11th January, 2010, be substituted by the following schedule:



TIME SCHEDULE FOR RECEIPT OF THE APPLICATIONS OF POST GRADUATE (BROAD SPECIALITY) COURSES/INCREASE OF ADMISSION CAPACITY AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND MEDICAL COUNCIL OF INDIA.

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 15th March to 7th April (both days inclusive of any year)
2.	Forwarding application by the Central Government to Medical Council of India	By 15th April
3.	Technical scrutiny, assessment and Recommendations of Letter of Permission by the Medical Council of India	By 30th September
4.	Receipt of reply/compliance from the applicant by the Central Government and for personal hearing thereto, if any and forwarding of compliance by the Central Government to the Medical Council of India.	Two months from receipt of recommendation from MCI but not beyond 15th November
5.	Final recommendations for the Letter of Permission by the Medical Council of India	By 31st January
6.	Issue of Letter of Permission by the Central Government	By 28th February

TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR OPENING OF POSTGRADUATE (SUPER SPECIALITY) COURSES/INCREASE OF ADMISSION CAPACITY AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND MEDICAL COUNCIL OF INDIA

S. No.	Stage of processing	Last Date
1.	Receipt of applications by the Central Government	Between 1ST August to 21st August (both days inclusive) of any year
2.	Forwarding application by the Central Government to Medical Council of India	By 31st August
3.	Technical Scrutiny, assessment and recommendations for Letter of Permission by the Medical Council of India	By 31st December
4.	Receipt of reply/compliance from the applicant by the central Government to the Medical Council of India	By 15th February
5.	Final recommendations for the Letter of Permission by the Medical Council of India	By 30th April
6.	Issue of Letter of Permission by the Central Government	By 31st May



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In exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956 (102 of 1956), the Medical Council of India with the previous sanction of the Central Government hereby makes the following regulations to further amend the 'Postgraduate Medical Education Regulations, 2000', namely:

1.(i) These regulations may be called the 'Postgraduate Medical Education (Amendment) Regulations, 2015'.

(ii) They shall come into force from the date of their publication in the Official Gazette.

2. In the 'Postgraduate Medical Education Regulations, 2000' further amended till 17/04/2013, the following additions/modifications/deletions/substitutions, shall be as indicated therein.

3. In the appendix in 'Postgraduate Medical Education Regulations, 2000', included vide amendment notification dated 23rd March, 2006, the time schedule for completion of admission process for postgraduate courses stands substituted by the following schedules:

Time Schedule for completion of Admission Process for PG (Broad Speciality) Medical Courses for All India Quota and State Quota

S. No.	Schedule for admission	Broad Speciality	
		All India quota	State quota
1.	Conduct of Entrance Examination	Month of December	Month of January
2.	Declaration of result of the qualifying Exam/Entrance Exam	By 15th of January	By 15th of February
3.	1st round of counselling/admission	Between 12th March to 24th March	Between 4th April to 15th April
4.	Last date for joining/reporting the allotted college and the course.	By 3rd April	By 22nd April
5.	2nd round of counselling/admission for Vacancies	Between 23rd April to 30th April	Between 11th May to 20th May
6.	Last date of joining for the 2nd round of counselling/admission.	By 10th May	By 27th May
7.	Commencement of the academic session/term.	1st May	1st May
8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason	-	By 31st May



Note:

1. All India Quota Seats remaining vacant after last date for joining, i.e. 10th May will be deemed to be converted into state quota.

2. Institute/college/courses permitted after 28th February will not be considered for admission/allotment of seats for current academic year.

3. In any circumstances, last date for admission/joining will not be extended after 31st May.

Time Schedule for completion of Admission Process for PG (Super speciality) Medical Courses)

S. No.	Schedule for admission	Super Speciality
1.	Conduct of Entrance Examination	By 10th July
2.	Declaration of result of the qualifying Exam/Entrance Exam	By 15th July
3.	1st round of counselling admission	By 31st July
4.	Last date for joining the allotted college and the course	Between 1st to 7th August
5.	2nd round of counselling/admission	By 20th August
6.	Last date of joining for the 2nd round of counselling/admission	By 27th August
7.	Commencement of academic session/term	1st August
8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason	31st August

Note:

1. Institute/college/courses permitted after 31st May will not be considered for admission/allotment of seats for current academic year.

2. In any circumstances, last date for admission/joining will not be extended after 31st

August.

3. This Court gives the stamp of approval to the aforesaid schedule.

4. Regard being had to the prayer in the writ petition, nothing remain to be adjudicated. The order passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. Needless to say the AIIMS and the PGI (for the examination held in July) shall also follow the schedule on letter and spirit.

5. An application has been filed by the National Board of Examination for extension of time in respect of declaration of result of the Post Graduation Medical Education Examination. It is submitted by Mr. Gaurav Sharma, learned Counsel for the Medical Council of India that the result can be declared by 10th February by the said Board but counselling must be held by the time stipulated in the schedule as the date of counselling is not changed and there was a natural calamity in the State of Tamil Nadu. Accordingly, we extend the time. All the interlocutory applications and writ petitions are disposed of.



2. Royal Medical Trust & Anr. vs. Union of India; (2015) 10 SCC 19.

31. The MCI and the Central Government have been vested with monitoring powers Under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned.

The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students' community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving

various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of:
 (A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfill these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfill the basic requirements would be considered at the next stage.



(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise Inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings, the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned."

3. D.Y. Patil Medical College vs. Medical Council of India & Anr.; (2015) 10 SCC 51

13. The time schedule which has statutory force, has been ordered to be strictly adhered to by this Court in a plethora of decisions. This Court in Mridul Dhar (Minor) and Anr. v. Union of India and Ors. [MANU/SC/0029/2005 : (2005) 2 SCC 65] has laid down that for establishment of new medical colleges/increase in intake capacity, application should be filed within the prescribed period and only such applications which are complete in all respects, deserve/have to be treated as applications Under Section 10A. The complete applications are required to be forwarded to the MCI within the time frame that is by 30th September. In Mridul Dhar (supra), it was held as under:



27. In exercise of the powers conferred by Section 10-A read with Section 33 of the Act, MCI made the establishment of new medical colleges, opening of higher courses of study and increase of admission capacity in the Medical Council of India Establishment of Medical College Regulations, 1999. The Regulations, inter alia, provided as a qualifying criterion that the eligible organisation shall abide by the Indian Medical Council Act, 1956 as modified from time to time and the Regulations framed thereunder and shall qualify to apply for permission to establish new medical colleges only if the conditions therein are fulfilled. One of the conditions is that essentiality certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration. It also provides that the applicant own and manage a hospital of not less than 300 beds with necessary infrastructural facilities and capable of being developed into a teaching institution as prescribed by the Medical Council of India, in the vicinity of the proposed medical college. MCI has also made the establishment of the Medical College Regulations, 1999 in exercise of powers conferred by Section 10-A and Section 33 of the Act, inter alia, prescribing the form of essentiality certificate as a qualifying criterion to make application for permission to establish a medical college. These Regulations stipulate that essentiality certificate in Form 2 regarding no-objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at

the proposed site and availability of adequate clinical material as per the Council Regulations, have been obtained by the person from the State Government/Union Territory Administration concerned. The form of essentiality certificate requires a certificate from the competent authority to the following effect:

It is certified that:

(a) The applicant owns and manages a 300-bedded hospital which was established in....

(b) It is desirable to establish a medical college in the public interest.

(c) Establishment of a medical college at ... by (the name of society/trust) is feasible.

(d) Adequate clinical material as per the Medical Council of India norms is available.



It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the college with the permission of the Central Government.

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30. It cannot be doubted that proper facilities and infrastructure including a teaching faculty and doctors is absolutely necessary and so also the adherence to time schedule for imparting teaching of highest standards thereby making available to the community best possible medical practitioners. It cannot be said that such facilities are not insisted upon for Section 10-A seats. No instance has been brought to our notice where a Section 10-A seat in a government college has not been recognised Under Section 11. The all-India quota seats are applicable only to government colleges. In many colleges, full-fledged seats for all intent and purposes insofar as medical education is concerned, whether in a new medical college or in the increased intake in an existing college, are continuing as Section 10-A seats. Prima facie, we see no reason why such seats shall not be taken into consideration for calculating 15% share of all-India quota. The 15% quota seats get substantially reduced by not taking into account Section 10-A seats. We direct the Central Government, DGHS and MCI to examine this aspect in detail and

submit a report, on consideration whereof we would finally decide the matter regarding inclusion of Section 10-A seats for working out 15% all-India quota.

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32. Having regard to the professional courses, it deserves to be emphasised that all concerned including Governments, State and Central both, MCI/DCI, colleges--new or old, students, Boards, universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; admissions should not be in excess of sanctioned intake capacity or in excess of quota of anyone, whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

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35. Having regard to the aforesaid, we issue the following directions:

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4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

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14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with."

15. This Court in Priya Gupta v. State of Chhattisgarh and Ors. [MANU/SC/0437/2012 : (2012) 7 SCC 433] has laid down that every person, officer or authority who disobeys directions of this Court of adherence to the time schedule, shall be liable to be prosecuted under the provisions of the Contempt of Courts Act. Relevant portions of the directions issued by this Court in the said case are extracted hereunder:



40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.



41. Inter alia, the disadvantages are:

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(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

42. The Medical and Dental Councils of India, the Governments and the universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time-frame declared by this Court and the Regulations. It has come to the notice of this Court that despite warnings having been issued by this Court and despite the observations made by this Court, that default and non-adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court.

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45. The maxim *boni iudicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that

binding dicta be prescribed and statutory Regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied stricto sensu and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the abovestated principles.



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47. All these directions shall be complied with by all concerned, including the Union of India, Medical Council of India, Dental Council of India, State Governments, universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such institution/State, etc.

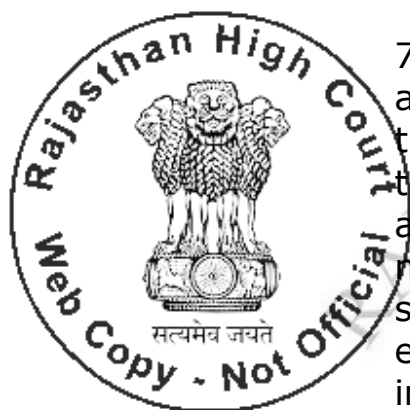
47.2. The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

47.3. Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

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78.4. With all the humility at our command, we

request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. We may refer to the dictum of this Court in *Medical Council of India v. Rajiv Gandhi University of Health Sciences* [MANU/SC/0325/2004 : 2004 (6) SCC 76], SCC para 14 in this regard.



78.5. We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of the judgments of this Court and the Regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the authorities/colleges concerned."

18. In W.P. [C] No. 705/2014 -Royal Medical Trust (Regd.) and Anr. v. Union of India and Anr. decided on 20.8.2015, this Court has observed that the Schedule must take care of following aspects:

(A) Initial assessment of the application at the first level should comprise of checking necessary requirements such as essentiality certificate, consent for affiliation and physical features like land and hospital requirement. If an applicant fails to fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of the MCI. By very nature such inspection must have an element of surprise. Therefore, sufficient time of about three to four months ought to be given to the MCI to cause inspection at any time and such inspection should normally be undertaken latest by January. Surprise inspection would ensure that the required facilities and infrastructure are always in place and not borrowed or put in temporarily.

(C) Intimation of the result or outcome of the

inspection would then be communicated. If the infrastructure and facilities are in order, the concerned Medical College should be given requisite permission/renewal. However if there are any deficiencies or shortcomings the MCI must, after pointing out the deficiencies, grant to the college concerned sufficient time to report compliance.

(D) If compliance is reported and the applicant states that the deficiencies stand removed, the MCI must cause compliance verification. It is possible that such compliance could be accepted even without actual physical verification but that assessment be left entirely to the discretion of the MCI and the Central Government. In cases where actual physical verification is required, the MCI and the Central Government must cause such verification before the deadline.

(E) The result of such verification if positive in favour of the Medical College concerned, the applicant ought to be given requisite permission/renewal. But if the deficiencies still persist or had not been removed, the applicant will stand disentitled so far as that academic year is concerned.

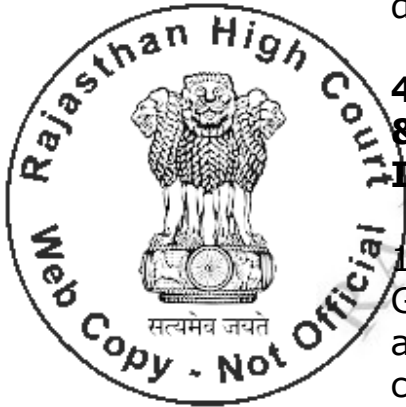
It is apparent from the aforesaid decision and the Regulations that the application at the first instance is required to be complete and incomplete applications are liable to be rejected. Thereafter, there has to be an inspection and other stages of decision-making process.

20. The MCI has also referred to decision of this Court in W.P. [C] No. 172/2014 -Singhad Technical Education Society v. Union of India decided on 3.5.2014 in which the application for the academic year 2014-15 was directed to be considered for the academic year 2015-16.

22. On an analysis of the aforesaid decisions, it is crystal clear that the time schedule is required to be strictly observed. Hence, it would not be appropriate to issue any direction for consideration of Petitioner's case for the ongoing academic session 2015-16 in which inspection is yet to be made. It is too late in the day to direct inspection for the session 2015-16 as all the dates fixed in the time schedule are over and fixation of time schedule has a purpose behind it and from a particular date the session has to commence and part of seats to be filled by a competitive examination held on all-India basis. Any relaxation



in the time schedule would make holding of examinations on an all India basis a farce and several complications would arise. Everything cannot be allowed to go haywire. The entire curriculum would be unsettled in case breach of time schedule is permitted. The power given to Central Government to relax can be exercised in exceptional circumstances and that too without disturbing the academic session. The decision-making process after inspection has various steps and it cannot be ordered to be done in haste resulting in sub-standard education and half-baked doctors.



4. Poonaiyah Ramajayam Institute of Science & Technology Trust vs. Medical Council of India & Anr; (2015) 10 SCC 83

16. Indisputably, now it is for the Central Government to approve or disapprove and to take a final decision on the report of the executive committee of the Council.

17. The crucial question that falls for consideration is as to whether this Court having regard to the facts of the case and the decision taken by the Council, which is not even looked into by the Central Government, this Court can issue any direction to consider the grant of permission to the Petitioner for the academic year 2015-2016."

5. Manohar Lal Sharma vs. Medical Council of India & Ors; (2013) 10 SCC 60

19. MCI on the basis of the reports, regular and compliance, is legally obliged to form an opinion with regard to the capacity of the college to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the medical college or for increase of admission capacity.

Section 10A of the Indian Medical Council Act, 1956 deals with the permission for establishment of new medical college, new course of study etc. Sub-section (7) of Section 10A is extracted hereunder for easy reference:
10A. Permission for establishment of new medical college, new course of study.-

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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."

20. It is the legislative mandate that when a new medical college is established or the existing medical college seeks to open a new or higher course of study or training, for accommodating the increased admission capacity it would be in a position to offer the minimum standards of medical education as prescribed by the MCI Under Section 19A or, as the case may be, Under Section 20 in the case of postgraduate medical education.





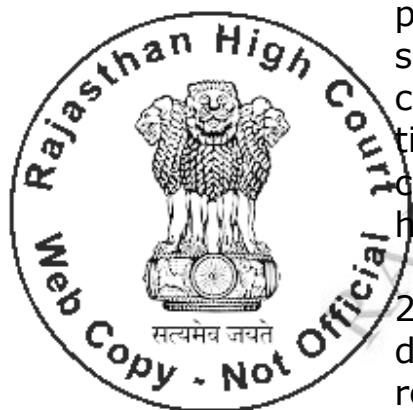
22. MCI, with the previous sanction by the Central Government, in exercise of its powers conferred by Sections 10A and 33 of the Indian Medical Council Act, 1956, made the Regulations known as the Establishment of Medical College Regulations, 1999. Regulation 8 of the Regulations 1999 deals with grant of permission for establishment of new college. Application/scheme submitted by the applicants is evaluated and the verification takes place by conducting physical inspection by the team of inspectors of the MCI. The Board of Governors may grant LoP to the applicant for making admissions in the first year of MBBS course in the medical college and the permission is renewed every year subject to the college achieving the yearly target mentioned in "Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999". Schedule I of the above mentioned Regulation provides for accommodation in the medical college and its teaching hospital. Schedule II deals with equipment required for various departments in the college and hospital. The requirements are statutorily prescribed and, therefore, the Board of Governors has no power to dilute the statutory requirements mentioned in the above mentioned Regulations.

23. We have also gone through the report of the surprise Inspection Team dated 06.07.2013 submitted by Dr. Mukesh Kalra and Dr. Ajay Agarwal. The MCI has got the power to conduct a surprise inspection to find out whether the deficiencies pointed out by the MCI have been rectified or not, especially when the College submits a compliance report. Surprise inspection naturally contemplates no notice, if the notice is given in advance, it would not be a surprise inspection and will give room for the College to hoodwink the Assessors by springing a surprise, by making perfect what was imperfect.

24. Surprise inspection, in this case, was conducted to ascertain whether compliance report could be accepted and to ascertain whether the deficiencies pointed out in the regular inspection were rectified or not. By pointing out the deficiencies, MCI is giving an opportunity to the College to rectify the deficiencies, if any noticed by the Inspection Team. It is the duty of the College to submit the compliance report, after rectifying the deficiencies. The MCI can conduct a surprise inspection to ascertain whether the deficiencies had been

rectified and the compliance report be accepted or not.

25. MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority. Rigid rules of natural justice are, therefore, not contemplated or envisaged. Rule 8(3)(1) of the Establishment of Medical College Regulations (Amendment) Act, 2010 (Part II), provides for only an "opportunity and time to rectify the deficiencies". Compliance report is called for only to ascertain whether the deficiencies pointed out were rectified or not. If the MCI is not satisfied with the manner of compliance, it can conduct a surprise inspection. After that, no further time or opportunity to rectify the deficiencies is contemplated, nor further opportunity of being heard, is provided.



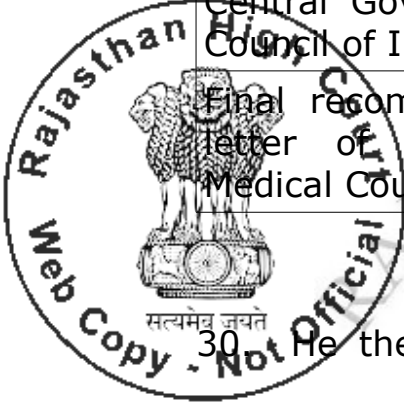
26. We have already dealt with, in extenso, the deficiencies pointed out by the MCI team in its report dated 06.07.2013. In our view, the deficiencies pointed out are fundamental and very crucial, which cannot be ignored in the interest of medical education and in the interest of student community. MCI and the College authorities have to bear in mind, what is prescribed is the minimum, if the MCI dilutes the minimum standards, they will be doing violence to the statutory requirements. MCI is duty bound to cancel the request if fundamental and minimum requirements are not satisfied or else College will be producing half-backed and poor quality Doctors and they would do more harm to the society than service. In our view, the infirmities pointed out by the Inspection Team are serious deficiencies and the Board of Governors of the MCI rightly not granted approval for renewal of permission for the 3rd batch of 150 MBBS students for the academic year 2013-14."

28. He has supported the order of Medical Council of India and contended that looking to the ratio laid down by the Supreme Court, the Medical Council is to select proper and efficient Doctors otherwise, inefficient Doctors will ruin the society therefore, High Court should not interfere in view of the different guidelines issued by the Supreme Court and the petition deserves to be dismissed.

29. He has also taken us to the record and contended that in view of the inspection and resolution taken thereafter, every

contention of the petitioner was considered by the authority therefore, the decision taken is just and proper and in view of the time bound programme as envisaged under the regulations, relevant programme of which reads as under:-

Stage of Processing	Last Date
Forwarding application by the Central Government to Medical Council of India	By 15 th July.
Final recommendations for the letter of permission by the Medical Council of India	By 30 th April.



30 He therefore, contended that no interference is called for, otherwise the schedule could not be complied with. He has also contended that the Medical Council of India has looked into the report of Council Assessors dated 5th March, 2018 alongwith previous assessment reports dated 31st October & 1st November, 2017, placed before the Executive Committee of the answering respondent in its meeting held on 24th March, 2018 including the photographs/videography and representation dated 7th March, 2018 received from the petitioner medical college.

31. He further contended that in view of the deficiency which has been pointed out 60.1% bed occupancy was not there. In that view of the matter, if the patients i.e. Clinical Material for the medical student is not available then High Court cannot be an expert on the subject and should not substitute its opinion over the team of experts/Assessors which made inspection of the hospital.

32. He contended that the minimum standard are not fulfilled even in the light of judgment in case of Ashish Ranjan (supra).

The assessor who has gone on 5th March, 2018 were well qualified, independent and there is no allegation of bias against any of the members of inspecting team who are Government College professors and they have opined impartially and their opinion is to be taken as final and the MCI has rightly accepted the same.

32.1. The inspection which was carried out on 31st October, 2017 and 1st November, 2017 and the later inspection on 5th March, 2018 was conducted by different and independent teams and both the teams have found that the deficiencies were of very crucial nature and therefore, renewal was rightly rejected.

33. Mr. Ashish Kumar for the Central Government has supported the order of the Central Government and contended in view of following decisions of the Supreme Court:-

"IQ City Foundation and Ors. vs. Union of India (UOI) and Ors.; AIR 2018 SC 790

9. As the facts would show, the Petitioner-institution was afforded an opportunity of hearing by the Hearing Committee which, thereafter, recorded the following findings:

1. On detailed examination of the documents, the deficiency of the faulty still persisting. Hence not acceptable.
2. The shortage of Residents is 25.88% (maximum acceptable is 5%).
3. It has been recorded in the Minutes of the MCI meeting that the Assessor resorted to only random checking of OPDs in just three Departments, namely TB & Respiratory, ENT and Psychiatry Department and has arrived at a figure without counting the total number of patients registered in all the Departments, which seems unreasonable and inaccurate.
4. Student hostel: The college authorities are producing the Chartered Architect Certificate on completion and occupancy of the hostel (to be verified).
5. The Anatomy Department had the requisite number of mounted/unmounted specimens on the date of inspection and is being treated as complied with.



Conclusion: The deficiency of faculty found by assessor was 15.9% and was accepted by the College. The reasons provided by the college for this deficiency are not compatible with MCI guidelines of acceptable leave. Also the deficiency of Residents was 25.88%. Therefore, renewal is not recommended.

10. The Central Government, considering the remarks of the Hearing Committee, passed an order which is to the following effect:

10. Now, therefore, in compliance with the above direction of Hon'ble Supreme Court, the Ministry granted hearing to the college on 22.08.2017. A Member of the newly constituted Oversight Committee also attended the Hearing Committee meeting. The Hearing Committee submitted its report to the Ministry with the following conclusion:

The deficiency of faculty by assessor was 15.9% and was accepted by the College. The reasons provided by the College for this deficiency are not compatible with MCI guidelines of acceptable leave. Also the deficiency was 25.88%. Therefore, renewal is not recommended.

A copy of the Hearing Committee report containing their observations is enclosed.

11. Accepting the recommendations of the Hearing Committee, the Ministry reiterates its earlier decision dated 31.05.2017 not to renew the permission to admit MBBS students at IQ City Medical College, Burdwan for the academic year 2017-18.

11. Thus, it is demonstrable that the competent authority of the Central Government, considering various aspects, had reiterated the order.

12. We have heard Mr. Mukul Rohatgi and Mr. P.S. Patwalia, learned senior Counsel for the Petitioners, and Mr. Ajit Kumar Sinha, learned senior Counsel for the 1st Respondent, and Mr. Vikas Singh, learned senior Counsel along with Mr. Gaurav Sharma, learned Counsel for the 2nd Respondent, MCI.

13. We may note here with profit that after the remand, the Petitioner-institution filed certain documents before the Hearing Committee on 22.8.2017.

14. The Petitioner-institution also filed salary slips of the teaching faculty and salary slips of Senior Resident Doctors and Junior Resident Doctors before the Hearing Committee. The said documents have also been brought on record. Paragraph 14 of the letter dated 22.8.2017 by the Petitioner-institution to the Secretary, Ministry of



Health and Family Welfare, Government of India reads as under:
 It needs to be mentioned that our Teaching Hospital has received accolades from a team of 7 International Doctors headed by Dr. Partha Sadhu and Dr. Klas Erik Kaspersson of "SMILE" and "INGA-International Foundation" who are carrying out a major camp for corrective surgery of Cleft Lip/Cleft Palate in our Medical College & Hospital from 16th August, 2017 to 24th August, 2017 under the name and style called "OPERATION SMILE". A total of 87 corrective surgeries for Cleft Lip and Cleft Palate have already been performed as of date in our Hospital during the said period. The Operation Smile and INGA International Foundation have till date conducted more than 100 such camps and performed more than 29,000 surgeries, Pan India. The said "SMILE" and "INGA-International Foundation" have issued a letter of appreciation to our College and Hospital stating that it is rare to find such outstanding "State-of-the-Art" Medical and infrastructure facilities.



15. That apart, the details of OPD patients between 15.3.2017 to 29.3.2017 have also been filed before the Hearing Committee as well as this Court. The grievance that has been vehemently agitated is that, had the Hearing Committee scrutinized the documents and appreciated the stand of the institution in proper perspective, the opinion of the Hearing Committee would have been quite different and as a corollary, the view of the Central Government would have been guided in an affirmative way in favour of the institution. The aforesaid submission, on a first blush, looks quite attractive but, on a keener scrutiny, pales into total insignificance. We are disposed to think so inasmuch as the Hearing Committee, on verification of every aspect, found that the deficiency of faculty members was 15.9 and the deficiency of Resident Doctors was 25.88 and, accordingly, it did not recommend for renewal. The Central Government, in its turn, observed that the deficiency found by the MCI was not compatible with the MCI guidelines. In such a situation, it is difficult to hold that there has been any perversity in the action of the authorities denying the renewal to the institution. Though we have given the stamp of approval to the decision of the Central Government, yet we are inclined to direct that the prayer for renewal shall be considered for the year 2018-19 and any bank guarantee that has been furnished shall be treated as deposit for the inspection and consideration for the next year, that is, 2018-19. Be it clearly stated, our opinion is

restricted to the non-granting of renewal for the year 2017-18 and not an expression of opinion with regard to the consideration of the prayer for 2018-19.”

2. IQ City Foundation and Ors. vs. Union of India (UOI) and Ors. (01.08.2017 – SC) (2017) 16 SCC 249

2. The expose' of facts essential for adjudication of the controversy are that IQ City Medical College attached to the teaching hospital, namely, IQ City Narayana Multispecialty Hospital was established in the year 2013 by the Petitioners with an intake of 150 (one hundred and fifty) seats MBBS Course. The Medical Council of India (MCI) conducted an inspection and granted the Letter of Permission (LOP) on 15.07.2013 for the establishment of the new medical college at Burdwan, West Bengal with an annual intake of 150 students with effect from the academic year 2013-14. Vide letters dated 04.07.2014, 10.06.2015 and 15.12.2015 renewals of permission for the 2nd (1st renewal), 3rd (2nd renewal) and 4th (3rd renewal) batches of MBBS students at the Petitioner College for the academic years 2014-15, 2015-16 and 2016-17 respectively were granted by the Respondent No. 1. On 06.07.2016, Petitioner-College submitted its scheme along with the requisite fees for the 4th renewal for the academic year 2017-18 which pertains to admission of the 5th batch of 150 students in MBBS course. On 09.07.2016, the 2nd Respondent informed the College that the assessment for renewal of permission for the academic year 2017-18 would be undertaken by the Assessors appointed by it at any time after 15.07.2016 and the Petitioners were asked to fill in the Standard Inspection Form A, Form B and Declaration Form for the academic year 2017-18 and keep them ready for scrutiny at the time of assessment. There was also a direction for submission of the soft copies of the said Forms. As averred, the Petitioners duly submitted a compact disc containing soft copies of Form A, Form B and Declaration Form and upon receipt of the necessary documents, the 2nd Respondent constituted a team of Assessors and directed them to carry out the assessment inspection of the College. The inspection team, that is, the Assessors, conducted a surprise inspection of the College on 03.11.2016 and 04.11.2016. The Assessors pointed out certain deficiencies to the College and noted the same in the assessment report dated 04.11.2016. It is put forth in the Regular Inspection Report that the shortfall in Teaching Faculty and Resident Doctors were only



4.5% and 3.50% respectively which were well within the prescribed limit. Two other deficiencies that were pointed out, as asserted, were completely remediable and were duly remedied by the College. On 22.12.2016 the Executive Committee of the Respondent No. 2 considered the Assessment Report of the Assessors and decided to recommend to the Respondent No. 1 not to renew the permission to the College for the 4th renewal for the academic year 2017-18.

3. As further set forth, the 1st Respondent by its letter dated 03.02.2017 communicated to the College the recommendation dated 28.01.2017 of the Respondent No. 2 for disapproving the permission to the College for the 4th renewal for the academic year 2017-18 and called upon the College to submit a detailed point-wise compliance with documentary evidence. The College was further intimated about the hearing that was to be held on 09.02.2017 before the Hearing Committee. A team of representatives of the College appeared before the Hearing Committee on the date fixed and submitted the compliance report of the remarks and observations made by the Assessors of the Respondent No. 2. In the second week of March, 2017, the Petitioners received a copy of order dated 01.03.2017 issued by the 1st Respondent recording the recommendations/order passed by the Hearing Committee of the Respondent No. 1 Under Section 10-A(4) of the Act. The recommendation of the Hearing Committee was to the effect that the deficiencies pointed out by the 2nd Respondent were not such to warrant disapproval at that stage. Despite the aforesaid findings of the Hearing Committee, the 1st Respondent, instead of taking a final decision, referred the matter back to the Respondent No. 2 to review the same in the light of the recommendations/findings of the Hearing Committee alongwith documents submitted by the Petitioners and to furnish its recommendation.

4. On receipt of the said communication, the 2nd Respondent on 17.03.2017 constituted a team to carry out a Compliance Verification Assessment of the College. The team of Assessors instead of carrying out a compliance verification, on 21.03.2017 conducted a regular inspection in a random manner and instead of limiting to their scope of reviewing the compliance of the remarks/observations of the Hearing Committee proceeded to make a different kind of assessment.

5. It is contended that though the Compliance



Inspection Report was submitted, the Assessors required the College to submit a representation and accordingly, the College submitted the necessary representation to the Respondent No. 2. The Assessors, as per the stand of the Petitioners, noted certain deficiencies in their Compliance Verification. Executive Committee of the Respondent No. 2 held its meeting on 28.04.2017 but Minutes of the meeting were not uploaded on the official website of the Respondent No. 2 until 29.05.2017 and were not communicated to the Petitioners.



6. It is the stand of the Petitioners that on 20.05.2017, the Petitioners approached the 1st Respondent and submitted a detailed representation on that day with regard to Compliance Verification and deficiencies found by the Assessors appointed by the Respondent No. 2. The 1st Respondent, by the impugned order dated 31.05.2017, accepted the recommendation of the 2nd Respondent and rejected the scheme of permission of renewal for the 4th renewal (admission of the 5th batch, 150 student) MBBS Course for the academic year 2017-18. It is alleged that the order dated 31.05.2017 was communicated to the College on 30.06.2017.

7. A counter affidavit has been filed by MCI contending, inter alia, that if the permission is granted after 31.05.2017 it has to be for the subsequent academic year as per order passed by the Court in Dr. Ashish Ranjan and Ors. v. Union of India and Ors. MANU/SC/0548/2016 : (2016) 11 SCC 225 and subsequent orders passed in the said case. The Hearing Committee, according to MCI, was constituted by the Central Government and its members were eminent personalities and considering the report of Assessors, LOP for the academic year 2017-18 has been denied. The stand that the renewal has been illegally rejected is not correct as there are gross deficiencies. It is the stand of the MCI that question of "open remand" and "limited remand" does not arise. Once an inspection is conducted by the Assessors, it has to be done wholly and appropriately so that the standard of an institution that imparts medical education is maintained and the said standard is non-variable. The stand that the Assessors report dated 21.03.2017 pointed out certain deficiencies which were not mentioned in the previous assessment report dated 04.11.2016 is neither acceptable nor tenable, for the reason it is the solemn duty of the Assessors to ensure that there is no deficiency in the medical college and they

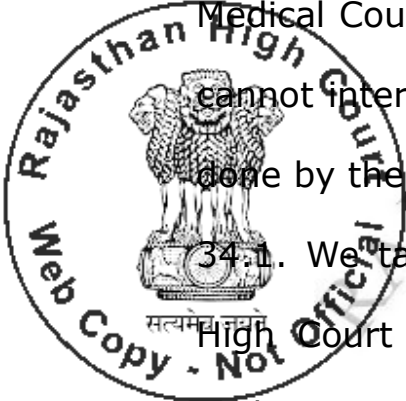
cannot ignore the deficiencies and, therefore, the plea that it exceeded the mandate is not only mercurial but wholly inconceivable.

34. Before proceeding with the matter, it will not be out of place to mention that we informed by Advocate of MCI that the Supreme Court has restricted the power of this Court under Article 226 of the Constitution of India and as per contention of the

Medical Council wide power has been given to MCI and High Court cannot interfere and not examine anything beyond what has been done by the MCI.

34.1. We take it very seriously that counsel for MCI thinks that High Court is below in power to the MCI and MCI is the sole authority to judge and High Court under Article 226 cannot do anything. The Supreme Court judgments which are shown by the counsel for Medical Council of India are for restriction or self restrain put forth by the Supreme Court and it is not restricting the power of this Court under Article 226 of Constitution of India. While considering the matter, we have kept in mind that we have not substituted our opinion over the opinion of MCI but basic principle is regarding consideration of the explanation tendered by the petitioner which is not considered in compliance of of principles of natural justice and speaks about arbitrary action on the part of MCI with pre-determine mind even the Central Government also acted contrary to statutory provisions violating principles of natural justice.

34.2 In that view of the matter, keeping in mind the principle laid down by the Supreme Court, we have not substituted our opinion but we have only set aside both the orders on the ground of



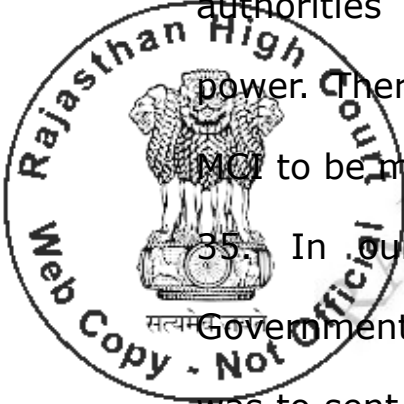
violation of principles of natural justice which is basic rule for any administrative decision.

34.3. We deprecate the submission made by counsel for the MCI and we take very serious note of the provisions of Article 226 which were never curtailed by the Supreme Court. It is absolute power of the High Court and High Court if it is found that the authorities are acting in arbitrary manner, it can exercise its power. Therefore, we find the submissions made by counsel for MCI to be misconceived and reject the same at the threshold.

35. In our considered opinion, the decision of the Central Government on 15th January, 2018 was very clear. The decision was to sent the MCI only for review on the basis of material which are available and it was given out by the Central Government to renew the permission but in between the words it was clear that the Central Government was willing to grant renewal permission to the petitioner-College.

36. The Committee finds no merit in depriving the College of renewal permission by MCI on the deficiencies pointed out and was of the opinion that renewal is to be granted. The authority of MCI reviewed the matter and recommended not to grant renewal permission. The review decision and recommendation of review decision was on the basis of material available but it appears that somebody at the MCI wanted the petitioner-College to close down therefore, thought it again for inspection on 5th March, 2018.

36.1. It is known to everyone that 'Holi' festival in State of Rajasthan was there and with dishonest intention, MCI on 5th March, 2018 made the inspection so that the College failed in all respects and everything is ruined in the light of deficiencies.



36.2. In our considered opinion, if the authority would have considered the explanation submitted by the petitioner-college, even any prudent man would have accepted the same and in the light of documentary proof, it is to be held without any doubt that the inspecting team has gone wrong. While considering the matter, one has to consider any problem from three angles, angle of inspecting team, angle of the college and third truth being considering the report of inspecting team and reproducing the order of MCI without discussing the explanation tendered by the petitioner-College and merely writing that the 7th March, 2018 reply is not considered is not sufficient for refusal of management.

The presumption should not be drawn that every management is dishonest rather it has to be accepted on the basis of report from the press from which it is clear that the institution is one of the best in the city of Jaipur and to reject the explanation at the threshold by the MCI cannot be justified.

37. In our considered opinion, this is purely an exercise of arbitrary and capricious manner which is required to be deprecated under Article 226 and we deprecate the same holding the MCI to be final authority on the subject, without supervision under writ jurisdiction. सत्यमेव जयते

38. In our considered opinion, Article 226 is supervisory jurisdiction though not akin to the power of the Supreme Court but in our exercise of powers, we set aside the order of the MCI dated 28th March, 2018 which was confirmed by the Central Government vide order dated 1st May, 2018 granting the petitioner-College recognition which was kept under abeyance because of the interim order granted by the Supreme Court. Therefore, now abeyance order will come to an end and



recognition granted by the Central Government on 31st May, 2018 will revive and other consequential orders of consideration of the petitioner-College for the admission of third batch of students which is under progress will be considered by the competent authority.

39. In our considered opinion, the order of the Central Government is also in violation of principles of natural justice and in clear violation of mandate of Rule 10 (A-4) as reproduced hereinabove. Therefore, the order of the Central Government is also required to be quashed and set aside. The Rule 7 which has been challenged we have read down the same and held that requirement to that extent was complete and we are of the opinion that average of 60% annually is to be also construed and not merely on the basis of one day that 60% was not there cannot be held justified.

39.1. The main purposes is to achieve 60% of the annual intake which has been prescribed and shown by counsel for the petitioner which are reproduced alongwith government gazette notification dated 22nd January, 2018 and more particularly form A-1 clearly shows annual admission average daily average of last 12 months and OPD and bed occupancy is to be shown at 10.00 a.m. & 2. p.m and as per the record at 2.00 p.m 899 patients were there.

40. In our considered opinion, any prudent man if consider the explanation tendered by the petitioner-College would have come to the same conclusion to which we have arrived.

41. In that view of the matter, the decision of the MCI dated 28th March, 2018 and the Central Government vide order dated 1st May, 2018 both are quashed and set aside.

42. The petition stands allowed.



43. In that view of the matter, the respondents will allow the petitioner-college to participate in the third batch of counseling which is under process, for admission of students against 150 seats in third batch of MBBS course for the academic year 2018-19.

(VIJAY KUMAR VYAS),J

(K.S.JHAVERI),J



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