

SUPREME COURT OF INDIA

Medical Council of India

Vs.

Rama Medical College Hospital

C.A.No.4911 of 2012

(Altamas Kabir and J.Chelameswar,JJ.)

04.07.2012

JUDGMENT

Altamas Kabir,J.

1. Leave granted.

2. The Indian Medical Council Act, 1956, hereinafter referred to as the “1956 Act”, was enacted, inter alia, to provide for the reconstitution of the Medical Council of India and the maintenance of a Medical Register for India and for matters connected therewith. Section 3 of the Act empowered the Central Government to constitute a Council, which as per Section 4(1) means the Medical Council of India, hereinafter referred to as the “Medical Council”, constituted under the 1956 Act.

3. In these matters, we are mainly concerned with the interpretation of Sections 10A and 11 of the 1956 Act. Section 10A of the 1956 Act, which provides for permission for establishment of new medical colleges and new courses of study, is extracted herein below:

“10A. Permission for establishment of new medical college, new course of study.-

(1)Notwithstanding anything contained in this Act or any other law for the time being in force:-

a) No person shall establish a medical college; or

b) No medical college shall -

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

(ii) Increase its admission capacity in any course of study or training (including a post-graduate 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 post-graduate 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 subsection (7), and submit the scheme together with its recommendations thereon to the Central Government.”

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

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

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

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

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

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

“a) whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under Section 19A or, as the case may be, under Section 20 in the case of post-graduate 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. 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.”

“It would be seen from the above that after the promulgation of the 1956 Act, no person would be entitled to establish a Medical College except in the manner provided in Section 10A, which, in addition provides that no medical college shall open a new or higher course of study or training, including a post-graduate course of training, which would enable a student of such course or training to qualify himself for the award of recognised medical qualification, except with the previous permission of the Central Government. The said prohibition also extends to the increase in admission capacity in any course of study or training, including post-graduate study or training, except with such previous permission of the Central Government. Sub-Section (2) categorically provides that 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 Medical Council for its recommendations. The said Council has been authorized to scrutinize the scheme and make such suggestions, as may be necessary, to rectify any defect and, thereafter, to forward the same, together with its recommendations, to the Central Government. Sub- Section (7) provides that the Council while making its recommendations shall take into consideration the factors mentioned therein. In other words, although, the Central Government is the authority to grant sanction to the establishment of a medical college, it is the Medical Council of India which plays a major role in deciding whether such sanction could be given by the Central Government. Section 11 of the 1956 Act deals with recognition of medical qualifications granted by universities or medical institutions in India. The same also being relevant to the facts of this case, is reproduced herein below:

“11. Recognition of medical qualifications granted by Universities or medical institutions in India.-

(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date. In addition to the aforesaid provisions, Section 10-B of the 1956 Act is also of significance as it deals with non-recognition of medical qualifications in certain cases. For the sake of reference, the same is also extracted herein below:-

“10-B. Non-recognition of medical qualifications in certain cases.-

(1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provision of Section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognized medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provision of Section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognized medical qualification for the purposes of this Act.

Explanation- For the purposes of this Section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.”

9. It is amply clear from Section 10B that if a Medical College is established, except with the previous permission of the Central Government, as provided under Section 10A, no medical

qualification granted to any student of such medical college shall be recognized as a medical qualification for the purposes of the Act. At this juncture, reference may be made to the “Establishment of Medical College Regulations, 1999”, framed by the Medical Council of India in exercise of powers conferred under Section 10A read with Section 33 of the 1956 Act, and notified on 30th July, 1999. The same came into force on their publication in the Official Gazette on 28th August, 1999, and is hereinafter referred to as the “1999 Regulations”.

10. Regulation 4 of the 1999 Regulations, inter alia, provides that applications for permission to set up Medical Colleges are to be submitted to the Secretary (Health), Ministry of Health and Family Welfare, Government of India, along with a non-refundable application fee of Rs.3.5 lakhs in the form of a demand draft/pay order in favor of the Medical Council of India for Central and State Government Colleges and Rs.7 lakhs for private sector medical colleges and institutions. Regulation 5 provides that applications received by the Ministry of Health and Family Welfare are to be referred to the Medical Council for registration and evaluation and recommendations. Regulations 6 and 7 provide that after evaluation, the Council shall send a factual report to the Central Government with its recommendations to issue or not to issue Letters of Intent. Regulation 8 of the 1999 Regulations is the provision for grant of permission and since it is of considerable significance to the issue involved in these proceedings, the same is reproduced herein below:

“8. Grant of permission:

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

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

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

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

11. The above Regulation makes it clear that irrespective of whether the applicant is the Central Government or a State Government or a private person, the Central Government may, on the recommendation of the Medical Council, issue a Letter of Intent to set up a new medical college and formal permission 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, once the conditions and modifications indicated in the Letter of Intent are accepted and after consulting the Medical Council of India. Sub-regulation (3) is important for our purpose as it also related to certain other Regulations published by the Medical Council in 2000. It provides, without any ambiguity that the provision to establish a medical college and to admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievement of annual targets. It may be noted that Section 10A speaks of permission and not recognition on a year to year basis. Recognition follows once the newly-established medical colleges/institutions satisfactorily complete five years with the graduation of the first batch of students admitted to the institution when initial permission is granted. It also provides with complete clarity that it shall be the responsibility of the applicant to apply to the Medical Council for renewal of permission six months before the expiry of the initial permission and that the process of renewal of permission will continue till all the required formalities are completed and a formal recognition of the medical college is granted.

12. From the aforesaid provisions it is very clear that recognition to a degree awarded by a newly-established medical college can be given only after all the requirements for the establishment of the medical college and expansion of the hospital facilities are completed. It

has also been stipulated that further admissions shall not be made at any stage unless the requirements of the Council are fulfilled.

13. Reference may also be made to the Regulations framed by the Medical Council of India relating to opening of higher courses of study and increase of admission capacity in medical colleges and published by the Medical Council of India under notification dated 14th August, 2000. The same are known as “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”, hereinafter referred to as “the 2000 Regulations”, which came into force on 7th October, 2000. Thereafter, Regulation 3, which provides for permission for establishment of a new or higher course of study, etc., reads as follows:-

“(3) The permission for establishment of a new or higher course of study, etc. -

No medical college, shall -

a) 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 recognized medical qualification; or

b) Increase admission capacity in any course of study or training (including a post-graduate course of study or training); except after obtaining the previous permission of the Central Government by submitting Scheme annexed to these regulations.”

14. Regulation 3 of Part I of the said Regulations sets out the “Qualifying Criteria” which provides as follows:

“Qualifying Criteria:

The medical college/institution shall qualify for opening a New or Higher Course of Study or Training (including a Post-graduate Course of Study or Training) in the medical colleges/institutions if the following conditions are fulfilled:

1. (1) The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Post-graduate Course; however, the medical college/Institute which is not yet recognized by the Medical Council of India for the award of MBBS Degree may apply for starting of a Post- Graduate Course in pre- clinical and Para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic

Medicine and Community Medicine at the time of third renewal - i.e. along with the admission of fourth batch for the MBBS Course”; [Emphasis Supplied]

15. Regulation 3 of Part II of the Regulations, dealing with Qualification Criteria initially provided that a medical college/institution would qualify to apply for increasing the number of admissions in MBBS/PG Diploma/Degree/Higher Specialty Course in the existing medical college/institution, if it fulfilled certain conditions, one of which was that the medical college/Institution had been recognized by the Medical Council of India as being capable of running such courses. The aforesaid paragraph was, subsequently substituted by the following:

“The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate Course; however, the Medial College/Institute which is not yet recognized by the Medical Council of India for the award of MBBS Degree may apply for starting of a Post-Graduate Course in pre-clinical and para- clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Community Medicine at the time of fourth renewal - i.e. along with the admission of fifth batch for the MBBS Course.” [Emphasis Supplied]

16. It is in the aforesaid background that the Medical Council of India filed Special Leave Petition (Civil) No.28996 of 2011, and two other Special Leave Petitions, which are being heard along with three Writ Petitions filed by private institutions claiming the right to increase their admission capacity.

17. Appearing on behalf of the Medical Council of India, Mr. Nidhesh Gupta, learned Senior Advocate, referred to the relevant provisions of the 1956 Act, which have been referred to and reproduced hereinabove. Mr. Gupta relied heavily on the requirements to be fulfilled by the Applicant colleges for obtaining Letter of Intent and Letter of Permission for establishment of new medical colleges and yearly renewals under Section 10A of the Indian Medical Council Act, 1956, published by the Medical Council of India and approved by the Central Government in its Ministry of Health Family Welfare vide letter dated 13th October, 2009. Laying stress on the requirements to be fulfilled for yearly renewals under Section 10A of the 1956 Act, Mr. Gupta also referred to the 2000 Regulations, with particular reference to Regulation 3 of Part I of the Regulations dealing with Qualification Criteria as set out hereinabove. Mr. Gupta submitted that it would be clear from the substituted Sub-Regulation (1) of Regulation 3 that it was always the intention of the Central Government and the Medical Council of India that for the purpose of increase in the number of admissions in the different courses, the medical college/institution had to be recognized by the Medical Council

of India of being capable of running Bachelor of Medicine and Bachelor of Surgery/Post-Graduate Courses. Mr. Gupta urged that the said clause also provides that even in cases of medical colleges and institutes, which were not yet recognized by the Medical Council of India for the award of MBBS degree, they could also apply for increase of intake in the Post-Graduate Courses at the time of fourth renewal i.e. along with the admission of the fifth batch for the MBBS Course. Mr. Gupta submitted that the said provision makes it very clear that degrees awarded by medical colleges and institutions could not be recognized prior to the completion of the five year course and that only at the time of the fourth renewal, namely, for the final year course, could an application be made for such purpose along with the admission of the fifth batch for the MBBS Course, or in other words, with the admission of the final year students of the MBBS Course. Mr. Gupta submitted that the said provisions unambiguously indicate that without completion of the five- year course and the graduation of the first batch of MBBS students, a medical college or institution could not be recognized for the purposes of Section 10A or 11 of the 1956 Act.

18. In addition to what has been mentioned hereinabove, Mr. Gupta laid special stress on Regulation 8 of the 1999 Regulations relating to grant of permission for setting up of a new medical college. He laid special stress on Sub-Regulation 3, extracted hereinbefore, which provides that 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. The said Regulation further provides that, for the purpose of renewal, an application would have to be made to the Medical Council of India at least six months prior to the expiry of the initial permission and that the process of renewal of permission would continue till such time as the establishment of the medical college and expansion of the hospital facilities are not completed and a formal recognition of the medical college is not granted. Mr. Gupta also laid stress on the further provision contained in the said Regulation to the effect that further admissions would not be made at any stage, unless the requirements of the Council are fulfilled. The said submissions were made in the light of Regulation 3 of Part II dealing with the question of “qualification criteria”, where under it has been provided that the medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate Courses. The said Regulation further provides for fourth renewal, along with the admission of the fifth batch for the MBBS Course. Mr. Gupta submitted that the aforesaid provisions were sufficient to prove his case that recognition of the degree awarded by the newly-established medical college could only be given by the Central Government after the first batch of students of the MBBS Course had completed the said Course and recommendations had been made by the Medical Council to grant such recognition.

19. In support of his submissions, Mr. Gupta referred to and relied upon several decisions of this Court. Referring to the three-Judge Bench decision of this Court in the case of *Medical Council of India Vs. State of Karnataka Ors*¹Mr. Gupta submitted that one of the questions which fell for decision in the said case was the extent of the powers of the Medical Council of India to fix the admission capacity in the medical colleges/institutions and its role in regard to the increase in number of admissions in such institutions. One other question which also fell for consideration was with regard to the status of the regulations framed by the Medical Council under the 1956 Act.

20. On the first issue, one question which was raised was whether the directions given by the Medical Council under the Regulations framed by it were mandatory or directory in character. In this connection, this Court had occasion to consider its decision in *State of M.P. Vs. Nivedita Jain*²in which it had, inter alia, been held that all the Regulations framed by the Medical Council of India under the 1956 Act, were directory in nature. While considering the matter, this Court held that the Indian Medical Council Act is relatable to Entry 66 of List I and prevails over any State enactment to the extent the State enactment is repugnant to the provisions of the said Act, even though the State Act may be relatable to Entry 25 or 26 of the Concurrent List. This Court further held that Regulations framed under Section 33 of the 1956 Act, with the previous sanction of the Central Government, are statutory and had been framed to carry out the purposes of the Act and for various other purposes mentioned in Section 33. This Court further held that if a Regulation falls within the purposes referred to under Section 33 of the Act, it would have statutory force. It was ultimately held that the State Acts, and in the said case, the Karnataka Universities Act and the Karnataka Capitation Fee Act, would have to give way to the Indian Medical Council of India Act, 1956, which was a Central Act.

21. The next case referred to by Mr. Gupta is a decision of the Constitution Bench in several writ petitions in which the lead writ petition, being No.290 of 1997, was filed by Dr. *Preeti Srivastava Anr. against the State of M.P. Ors*³Some of the questions which fell for the determination of the Constitution Bench were similar to those which had been taken up and decided in Nivedita Jain's case (supra). While 4 out of 5 Judges were unanimous on the issue that by virtue of Entry 66 of List I and Entry 25 of List III, the State's competence to control or regulate higher education is subject to the standards so laid down by the Union of India, the dissenting view taken by one of the Hon'ble Judges was that while the Parliament was competent to authorize the Medical Council of India to prescribe basic standards of eligibility and qualification for admission to the Postgraduate Courses under the Medical Council Act, the States were fully competent to control admission to Post-Graduate Medical Courses in the absence of any central legislation on these aspects. The majority view was similar to the view expressed in the decision in the Medical Council of India case (supra). It was further held that

in view of Entry 66 of List I, a State has the right to control education, including medical education, so long as the field is not occupied by any Union List entry. Secondly, the State, cannot, by controlling education in the State, encroach upon the standards in institutions for higher education, because the same was exclusively within the purview of the Union Government. Distinguishing various earlier decisions of this Court in the cases of *Minor P. Rajendran Vs. State of Madras*⁴*Chitra Ghosh Vs. Union of India*⁵*State of A.P. Vs. Lavu Narendranath*⁶and *Ambesh Kumar (Dr.) Vs. Principal, L.L.R.M. Medical College*⁷the Constitution Bench criticized the decision rendered in Nivedita Jain's case (supra). Apart from the above, the majority view was that the power vested in the Medical Council under Section 20 of the 1956 Act, to prescribe the minimum standards for Post- Graduate education, was not merely advisory in nature, but that the universities were bound to abide by the standards prescribed. It was also the majority view that the norms had to be laid down by the Medical Council for determining reservation of seats for SCs/STs/OBCs and minimum qualifying marks for the candidates had also to be prescribed.

22. In his dissenting judgment, Justice S.B. Majmudar held that the provisions of Section 20 read with Section 33 empowers the Medical Council to lay down basic requirements of quantifications and eligibility conditions and once the same was done, it was for the States under Entry 25 of List III to control admission and to lay down the criteria for shortlisting the eligible candidates, since Parliament had not legislated on this aspect. The Hon'ble Judges representing the majority view made it clear that under the 1956 Act, the Medical Council had been set up as an expert body to control the minimum standards of medical education, including Postgraduate medical education, and to regulate their observance. Their Lordships also held that the Council had implicit power to supervise the qualifications or eligibility standards for admission into medical institutions and that the Act provided for an overall vigilance by the Medical Council to prevent sub-standard entrance qualifications for medical courses. It was further held that the scheme of the 1956 Act did not give an option to the universities to follow or not to follow the standards laid down by the Medical Council.

23. Reference was also made to the decision rendered by a Bench of two Judges in *K.S. Bhoir Vs. State of Maharashtra Ors*⁸which was heard along with some other Civil Appeals, where the issues were common. The first issue raised and deliberated upon was the proposed one-time increase in admission capacity in medical colleges. Striking out the State provision, this Court held that the non-obstante clause contained in Section 10A(1) means that an increase in admission capacity in a medical college is prohibited, unless previous permission is obtained from the Central Government in accordance with the recommendation of the Medical Council of India. Their Lordships also observed that the entire scheme of Section 10A of the Act had to be read in consonance with the other Subsections to further the object behind the amending Act which was to achieve the highest standard of medical education. Their

Lordships observed that the objective could be achieved only by ensuring that a medical college had the requisite infrastructure to impart medical education. In the facts of the said case and in view of Section 10A(1), Their Lordships ultimately held that the one-time increase proposed by the State Government in the admission capacity in the various medical colleges, should have been accompanied by a scheme prepared in accordance with the Act and the Regulations and submitted to the Central Government. Their Lordships also held that in the absence of any scheme submitted to the Central Government in regard to the one-time increase in the admission capacity in the medical colleges, the Central Government was justified in refusing permission for the same.

24. The next decision referred to by Mr. *Gupta* was that rendered in the case of *Govt. of A.P. Anr. Vs. Medwin Educational Society Ors*⁹ wherein the same view, as was expressed in the decision in K.S. Bhoir's case, was reiterated. It was reiterated that the decision of the State Government in the matter was not final, as the final decision had to be taken by the Central Government on the basis of the recommendations of the Medical Council under the relevant provisions of the Indian Medical Council Act, 1956.

25. Mr. Gupta lastly submitted that it is settled law that an individual State is entitled to legislate on any of the Entries contained in the Concurrent List even if there was in existence a central law on the said subject, but in case of repugnancy, the law enacted by the State would have to give way to the central law. Mr. Gupta urged that the Division Bench of the High Court had erred in interpreting the use of the expression "formal recognition" in Sub-Regulation (3) of Regulation 8 of the 1999 Regulations, and had erroneously held that the same could be preceded by grant of adhoc recognition, which could subsequently be converted into a formal recognition, as contemplated by Section 11 of the 1956 Act. Mr. Gupta also urged that the decision of the Division Bench of the High Court concurring with the reasoning of the learned Single Judge that the Regulation does not contemplate that a college must be recognised to award degrees, i.e., it does not contemplate recognition under Section 11 of the 1956 Act and that it is permissible in a college to effect increase in the admission capacity, even at the stage when it has permission/recognition under Section 10A of the 1956 Act, was wholly erroneous and was liable to be struck down.

26. Mr. Gupta pointed out from a number of decisions of this Court that in an extraordinary case the Court may itself pass an order to give directions which the Government or public authority should have passed or issued. Mr. Gupta submitted that having held as much, the learned Single Judge had quite wrongly issued a mandamus to increase the capacity pertaining to the MBBS course from 100 to 150 seats in each of the three colleges, thus wandering into the territory of the Medical Council of India which had the necessary expertise and the authority under the Regulations to evaluate as to whether the medical

institution was capable of catering to more students than initially envisaged. Mr. Gupta submitted that while increasing the number of students from 100 to 150, the Court not only acted beyond its jurisdiction in giving such direction, but it failed to take into consideration the fact that under the relevant regulations it was only the Medical Council which could have allowed such increase, once it was satisfied that the concerned institution had proper facilities to support such an increase.

27. Mr. Gupta, therefore, urged that since the process adopted by the learned Single Judge, which was affirmed by the Division Bench of the High Court, being contrary to the Rules and Regulations in respect of the issues raised in the appeals, the same could not be sustained and were liable to be set aside.

28. Mr. T.S. Doabia, learned Senior Advocate, who appeared for the Union of India, adopted the submissions made by Mr. Nidhesh Gupta and added that the scheme for granting permission to establish new medical colleges/institutions and also for granting permission to increase the number of seats in the institution, made it quite clear that it was only the Central Government, acting on the recommendation of the Medical Council of India, which could either grant permission for the establishment of a new medical institution or grant recognition to the institution itself, once the first batch of students admitted had completed their fifth year and had graduated. Mr. Doabia submitted that this was a scheme which had been framed both under the Act and the Rules and Regulations framed thereunder and the Medical Council of India and the Union of India had complete say in the matter. The inclusion of a third party was not contemplated under the provisions of Sections 10A or 10B of the 1956 Act. Accordingly, the mandamus issued by the learned Single Judge of the High Court, which was affirmed by the Division Bench, was liable to be set aside.

29. Mr. Dushyant Dave, learned Senior Advocate appearing for the School of Medical Sciences and Research, Sharda Education Trust, the Respondent No.1 in SLP(C)No.30338 of 2011, raised the question as to whether it could have been the intention of the legislature to grant year to year recognition when a medical college was newly-established, till the first batch of students graduated therefrom after five years. Questioning the reasonability of such a view, Mr. Dave submitted that once permission was granted to a medical college/institution to commence classes, it would be quite absurd to accept the reasoning that such permission would have to be renewed annually, since after being satisfied that the institution was capable of running a medical course, permission had been granted to commence the classes for the first year.

30. Referring to Sections 10A(1)(b) and (4), Mr. Dave pointed out that the said provisions contemplated a one-time recognition and a citizen's inherent right to establish medical

colleges cannot be curtailed by the provisions for grant of year to year recognition. Mr. Dave also urged that under the garb of exercising its powers under Section 19 of the 1956 Act, the Council could not assert that it could also regulate the manner in which the recognition was to be granted.

31. Mr. Dave submitted that the provisions of Section 19A could not be read into the provisions of Section 10A for permission to establish a new medical college or new course of study, as otherwise the grant of recognition from year to year would deter students from taking admissions in the medical college on account of the uncertainty of being able to continue the MBBS course in the event recognition was not granted for the subsequent year.

32. Mr. Dave, however, confined his submissions only to the question of increase in the number of students, in respect whereof he submitted that there could not be any fetters. Mr. Dave contended that the curtailment of the right of an institution to 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, was in violation of the provisions of Article 19(1)(g) of the Constitution, as such prohibition was not only illogical, but was unreasonable also. Mr. Dave submitted that if permission could be granted to admit 100 students, there could be no logical reason as to why, in order to increase the number of students/seats, an institution would have to wait for five years before recognition was granted to the institution by the Central Government on the recommendation of the Medical Council.

33. Drawing an analogy with the provisions of Order XXXIX Rules 1, 2 and 3 of the Code of Civil Procedure, 1908, Mr. Dave submitted that it would always be prudent to look into the matter at length before granting ad- interim orders. According to Mr. Dave, before imposing conditions regarding grant of recognition from year to year, it would be more pragmatic to think over the matter with greater intensity before uniformly contending that a newly-established medical college/institution would have to seek fresh permission/recognition each year, before being finally granted recognition after the fifth year, when the first batch of students would graduate from the institution.

34. In support of his submission, Mr. Dave firstly referred to the decision of this Court in *Shiv Kumar Chadha Vs. Municipal Corporation of Delhi*¹⁰ in which a three-Judge Bench of this Court, while considering the provisions of Order XXXIX Rule 3 C.P.C. and the proviso thereto held that the proviso had been introduced in order to compel the Court to give reasons as to why the provisions relating to notice was being dispensed with. Mr. Dave contended that instead of prohibiting the creation of new seats in the medical college/institution, the concerned authorities should sit and ponder over the matter to come to a conclusion as to

whether such a bar was necessary when the institution was already running a medical course with a sizable number of students.

35. Mr. Dave urged that the doctrine of proportionality has been introduced by the Courts to ensure that the action taken against any individual did not transgress the constitutional provisions relating to the right of an individual to establish medical colleges/institutions as a concomitant of the right contained in Article 19(1)(g) of the Constitution. Mr. Dave concluded his submissions by urging that the attempt to impose extra-constitutional obstructions to a person's right to establish a medical college/ institution, could not have been the intention of the framers of the Constitution, who all were in favour of the right to practise any profession or trade and included the same as a fundamental right under Part III of the Constitution.

36. While endorsing the submissions advanced by Mr. Dave, Dr. Abhishek Manu Singhvi, learned Senior Advocate, who appeared for the Respondent No.1, Rama Medical College, in SLP(C)No.28996 of 2011, submitted that there was a waste of human resources by denying admission to deserving students who wanted to pursue a medical course, although, the required facilities were available, only on the ground that such increase had not been sanctioned by the concerned authorities. Referring to the provisions of Sections 10A and 11(2) of the 1956 Act, Dr. Singhvi submitted that an interpretation of Section 10 of the aforesaid Act, as was being sought to be given, was entirely illogical, particularly when there was no specific legislation to the contrary. Dr. Singhvi urged that when facilities had been found to be sufficient for 100 students, facilities providing for 150 students, would have to be presumed to be sufficient as well.

37. Dr. Singhvi submitted that it is Section 10A of the 1956 Act which deals with setting up of new medical colleges/institutions or enhancement of numbers. According to learned counsel, Section 11 of the 1956 Act had been wrongly pressed into service, since it concerns the Centre's power to recognize degrees. Expressing himself idiomatically, Dr. Singhvi urged that trying to read Section 11 with Section 10A was like trying to mix chalk and cheese and an attempt to do so would lead to absurdity. In this connection, Dr. Singhvi referred to a three-Judge Bench decision in *Mridhul Dhar Vs. Union of India*¹¹ in which among several issues, one issue which fell for consideration was about not taking into consideration, for determining All-India quota, those seats which were created under Section 10A of the Act. The Hon'ble Judge recorded that according to the Medical Council of India, only seats recognized under Section 11 are taken into consideration and not the seats which are permitted under Section 10A of the Act. The provisions of Regulation 8(3) of the 1999 Regulations were also noted.

38. Having considered the said Regulation and the effect of Section 10A and Section 11 of the 1956 Act, Their Lordships gave various directions, including a direction that the States, through the Chief Secretaries/Health Secretaries, should file a report in regard to admissions with the Director General of Health Services, by 31st October, 2004, with the DGHS giving details about adhering to the time schedule and the number of admissions granted as per the prescribed quota. Dr. Singhvi urged that the non- utilization of available resources was not intended by the legislature and the same also amounted to violation of the provisions of Article 21 of the Constitution.

39. Mr. Pradip K. Ghosh, learned Senior Advocate, who appeared for the Respondent No.1 in SLP(C)No.30332 of 2011, briefly reiterated the submissions already made. Referring to the writ petition filed by the Teerthankar Mahaveer Institute of Management and Technology, Moradabad, which was the petitioner in Writ Petition (C) No. 5763 of 2011, Mr. Ghosh urged that the society was running a large number of educational institutions in which about 8,500 students were pursuing their respective courses. Mr. Ghosh submitted that in 2008, the said society was granted the status of a private university and since it had all the required facilities, it moved the said writ petition for a mandamus on the respondents to grant permission to the writ petitioner college to admit 150 MBBS students, instead of 100, for the academic year 2011-12.

40. Mr. Kunal Cheema, learned Advocate, who appeared for the petitioner in Writ Petition (C) No.489 of 2011, Dashmesh Educational Charitable Trust, introduced a new dimension in the submissions by indicating that the expression “recognition” had not been used by the legislature in Section 10A of the Act. It talks of permission to establish a medical college/institution but the said expression finds place in the Regulations framed by the Medical Council under Section 10A(7)(g) read with Sections 33(fa) and 66 of the Act. According to Mr. Cheema, the permission granted to establish a medical college must be held to be sufficient for allowing the medical college/institution to deal with the problems relating to increase in the number of students in a given year for the medical course.

41. Mr. Mukesh Giri, learned Advocate, adopted the submissions made by the learned counsel before him and also questioned the stand taken on behalf of the appellants that the Regulations contemplated a situation where before the Section 11 stage is reached, an institution could not apply for increase in the number of students, even when the other conditions relating to infrastructure were fulfilled.

42. As indicated at the beginning of this judgment, in these matters we are mainly concerned with the interpretation of Sections 10A and 11, together with Sections 10 and 33 of the Indian Medical Council Act, 1956. The Division Bench of the High Court, while considering

the decision of the learned Single Judge, has laid undue stress on the expression “recognition by the Medical Council of India”, used in the 2000 Regulations, since such expression has been used in a completely different sense other than granting recognition to a medical college/institution for the purposes of Sections 10B and 11 of the 1956 Act. The said expression has to be read and understood as meaning that the concerned medical college/institution was recognized by the Medical Council of India as having the capacity to run such an institution. It is amply clear from Section 10A that what is contemplated there under is permission for establishing a new medical college, which is to be granted by the Central Government upon the recommendation of the Council. The use of the expression “recognition” in the Regulation does not affect or alter the intention of the legislature expressed in unambiguous terms in Section 10A as well as in Sections 10B and 11 of the 1956 Act. Both the 1956 Act and the Regulations framed by the Medical Council make it very clear that while the Central Government has the authority to recognize the degree awarded by a newly- established medical college/institution, it does so on the evaluation made by the Medical Council and its subsequent recommendation.

43. By pursuing the line of reasoning adopted by the learned Single Judge, the Division Bench allowed itself to be led into the error of coming to a finding that once permission/recognition was granted under Section 10A of the 1956 Act, it gave the grantee permission to run a complete course. The Division Bench led itself further into the quagmire created by it by dividing Regulation 3(1) into two parts in the following manner:

“a) The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Post Graduate Course; however

b) The medical college/institute which is not yet recognized by the Medical Council of India for the award of MBBS degree may apply for increase of intake in Post Graduate courses in pre-clinical and para- clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine Community Medicine at the time of 4th renewal i.e. along with the admission of 5th Batch for the MBBS Course.”

44. The interpretation sought to be given to Regulation 3(1) in the manner aforesaid portrays a totally wrong understanding of the scheme of the Act itself and the all-pervading presence of the Medical Council of India in the process of grant of recognition for running of medical colleges/ institutions. The said reasoning has also led the Division Bench to misconstrue the provisions of Sections 10B and 11 of the 1956 Act as to the right given to a medical college/institution, which has been established without the permission of the Central

Government as provided in Section 10A of the Act, to increase its admission capacity. Following the reasoning of the Single Judge, the Division Bench failed to see that Regulation 3(1) of the 2000 Regulations made it amply clear that those institutions which were yet to be recognized could apply for a Post- Graduate Course in subjects which were not part of the regular Post- Graduate Courses which were available to those who were in possession of a recognized MBBS degree. Both the Single Judge and the Division Bench of the High Court seem to have ignored the provisions of the 1999 and 2000 Regulations, framed by the Medical Council of India under the provisions of Sections 10A and 33, of the 1956 Act. It may be of interest to note that Section 33, which empowers the Medical Council to frame Regulations, provides in Subsections (fa) and (fb), the right to the Medical Council to frame a scheme in terms of Sub-Section (2) of Section 10A and also in regard to any other factors under Clause (g) of Sub-Section (7) of Section 10A. It is quite clear that the legislature has given the Medical Council of India wide authority to take all steps which are necessary to ensure that a medical institution, either at the time of establishment, or later at the time of applying for increase in the number of seats, has the capacity and the necessary infrastructure, not only to run the college, but also to sustain the increase in the number of seats applied for. To that extent, since the Act is silent, the Regulations which have statutory force will be applicable to the scheme as contemplated under the Act. We repeat that by allowing itself to get confused with the use of the expression “recognition” in Regulation 3(1) of the 2000 Regulations, both the learned Single Judge and the Division Bench of the High Court came to the erroneous conclusion that once permission had been granted under Section 10A to establish a new medical college/institution, the question of having to take fresh permission each year for any subsequent steps to be taken after grant of such permission till the fifth year of the course was completed, did not arise.

45. The aforesaid position would be doubly clear from the provisions of Subsection (3) of Section 10B, which, in no uncertain terms, provide that where any medical college increases its admission capacity in any course of study or training, except with the previous permission of the Central Government in accordance with the provisions of Section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity, shall be a recognized medical qualification for the purposes of the Act. In other words, without the previous permission of the Central Government within the scheme, as prescribed under Section 10A, i.e., without the recommendation of the Medical Council, any degree granted would not be recognized as a medical degree which would entitle such degree holder to function as a medical practitioner.

46. There is no getting away from the fact that Section 10A lays down the criteria for grant of permission for establishment of a new medical college and that Section 10B supplements the same by making it clear that even while increasing the number of seats in a medical

college/institution, the procedure indicated in Section 10A, and in particular Section 10A(2), would have to be followed. At every stage, it is the Council which plays a very important role in either the grant of permission to establish a new medical college or to increase the number of seats. Furthermore, on account of the Regulations of 1999 and 2000, the norms relating to eligibility criteria, as set out in the 1999 Regulations, as also in the 2000 Regulations, have to be complied with, either for the purpose of grant of permission for establishing a new medical college or for introducing a new course of study along with the intention of increasing the number of students in the medical institution.

47. In Part II of the 2000 Regulations, which deals with the scheme for obtaining the 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, another set of “qualification criteria” has been set out in Regulation 3(1) which has created some confusion in the minds of the learned Judges in the High Court by use of the expression “recognized by the Medical Council of India”. As indicated hereinbefore, what it seeks to indicate is that for the purpose of applying for increase in the number of seats, the medical college must be one which, in the opinion of the Medical Council, was capable of running the Bachelor of Medicine and Bachelor of Surgery/Post-graduate Course. It also provides that the medical college/institute which is not yet recognized by the Medical Council for the award of MBBS degree, may also apply for increase of intake in Post Graduate Course in pre- clinical and para-clinical subjects such as Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Community Medicine, at the time of fourth renewal, i.e, along with the admission of the fifth batch for the MBBS Course, which are courses not connected with the regular course of study. In fact, the controversy which surfaced in Nivedita Jain’s case (supra) that the Regulations framed by the Medical Council of India under Section 10A read with Section 33 of the 1956 Act, were directory in nature, was subsequently set at rest by the Constitution Bench decision in Dr. Preeti Srivastava’s case (supra), wherein the view expressed in Nivedita Jain’s case was overruled.

48. In view of the decision of the Constitution Bench, it is not necessary for us to refer to the other decisions cited both on behalf of the Medical Council of India and the respondents, since, in our view, the position is quite clear that in terms of the scheme of the Act and the Regulations framed by the Medical Council of India, it is the Central Government which is empowered to grant recognition to a medical college or institution on the recommendation made by the Medical Council of India. The role of the Medical Council of India in the grant of recognition to a medical college/institution is recommendatory and the Council has no power to grant recognition to a medical institution. Such power lies with the Central government. As pointed out by Mr. Cheema, no provision is available under the Act relating

to grant of recognition of a medical college/institution, since Section 10A speaks only of permission and not recognition. The same has been supplemented by the provisions of the 1999 and 2000 Regulations for the purpose of Section 10A(7)(g) of the Act.

49. For the reasons aforesaid, we are unable to agree with the reasoning of either the learned Single Judge or the Division Bench of the High Court in arriving at the finding that once permission had been granted under Section 10A of the Act, it would amount to grant of recognition and, thereafter, the medical college/institution, was free to enhance the number of seats without the permission either of the Council or the Central Government.

50. We, therefore, have no hesitation in setting aside the judgments, both of the learned Single Judge as also that of the Division Bench of the High Court, and the directions given to increase the number of seats from 100 to 150 in the MBBS course run by the writ petitioners. Since the 2000 Regulations provide for a newly- established medical college/institution to seek permission each year to continue with the MBBS course till the first batch of the students graduated, in our view, the position is quite clear that the recognition referred to in Sections 10B and 11 of the 1956 Act would have to relate to the grant of recognition to a medical institution under Section 11 for the purpose of recognition of its qualifications as a medical degree, which would entitle the holder thereof to practise medicine.

51. Consequently, upon setting aside the judgments of the learned Single Judge and the Division Bench and the directions contained therein, we also make it clear that this will not prevent the medical colleges/institutions from applying for increase in the number of students, provided such application fulfils the conditions and criteria of Section 10A and the Regulations framed thereunder by the Medical Council of India.

52. The appeals arising out of SLP(C)Nos.28996 and 30332 of 2011, preferred by the Medical Council of India and the appeal arising out of SLP(C)No.30338 of 2011, preferred by the Board of Governors, against the judgment and order dated 13th October, 2011, passed by the Delhi High Court in Letters Patent Appeal Nos. 820, 819 and 816 of 2011 respectively, along with the appeal arising out of SLP(C)No.3732 of 2012, preferred by the Medical Council of India against the judgment and order dated 14th November, 2011, passed by the Punjab and Haryana High Court in Civil Writ Petition No.16235 of 2011, are allowed. The impugned judgments and orders passed by the Delhi High Court, as also the Punjab and Haryana High Court, are set aside.

53. Consequently, Writ Petition (C) No.457 of 2011, filed by the School of Medical Sciences Research, Sharda University; Writ Petition (C) No.458 of 2011, filed by Teerthanker Mahaveer Institute of Management Technology Society, Moradabad; and Writ Petition (C) No.489 of 2011, filed by Dashmesh Educational Charitable Trust, are dismissed, as the

reliefs prayed for therein are in direct conflict with the provisions of Section 10A of the 1956 Act and Regulation 8(3) of the 1999 Regulations.

54. Having regard to the facts involved, all the parties in each of the matters will bear their own costs.

Judgment Referred

1(1998) 6 SCC 0131

2(1981) 4 SCC 0296

3(1999) 7 SCC 0120

4AIR 1968 SC 1012

5(1969) 2 SCC 0228

6(1971) 1 SCC 0607

7(1986) Supp. SCC 0543

8(2001) 10 SCC 0264

9(2004) 1 SCC 0086

10(1993) 3 SCC 0161

11(2005) 2 SCC 0065