SUPREME COURT OF INDIA

Swamy Devi Dayal Hospital & Dental College

Vs.

Union of India

S.L.P.(Civil) No.25698 of 2013

(K.S.Radhakrishnan and A.K.Sikri JJ.)

27.08.2013

JUDGMENT

A.K.SIKRI, J.

1. The petitioner is a Dental College set up in the year 2004 for imparting education in the B.D.S. course (Bachelor of Dental Science). The petitioner is recognized and affiliated to Respondent No.4 University, viz. Pt. B.D. Sharma University, Rohtak, Haryana.

2. The petitioner – college was desirous to start the MDS Course (Master of Dental Surgery). For starting the said course the petitioner was required to complete the formalities i.e.

(i) Essentiality and No Objection Certificate from the State Government;

(ii) Affiliation from Pt. B.D.Sharma University for Health Sciences, Rohtak and

(iii) Recognition from the Dental Council of India/Union of India.

3. Respondent No.3 – State of Haryana, vide letter dated 12.1.2010, granted 'No Objection Certificate' to the petitioner for starting MDS Course. The said 'No Objection Certificate' was granted by the State Government for starting MDS Course in 9 specialties i.e. Oral Surgery, Orthodontics, Conservative Dentistry, Prosthodontics, Periodontics, Oral Diagnosis, Oral Pathology, Pedodontics,

Periodontics, Oral Diagnosis, Oral Pathology, Pedodontics & Community Dentistry with 3 seats in each specialty from the session 2010-11.

4. Thereafter, Respondent No.4 – University granted provisional affiliation to the petitioner-college for 6 out of 9 specialties for academic session 2011-12. Respondent No.1, i.e. the Central Government also, on the recommendations of Respondent No.2/ Dental Council of India (hereinafter referred to 'DCI'), issued Letter of Intent to the petitioner for the aforesaid 6 specialties and later on granted permission to the petitioner-college to start MDS Courses in 6 specialties i.e. (i) Periodontology wih 3 seats (ii) Conservative Dentistry and Endodontics with 3 seats (iii) Oral Pathology & Microbiology with 3 seats (iv) Public Health Dentistry with 3 sets (v) Prosthodontics and Preventive Dentistry with 3 seats (vi) Paedodontics and Preventive Dentistry with 3 seats for the session 2011-12. The said permission was extended for the academic session 2012-13 and now the same has been extended for the academic session 2013-14.

5. In the present case, however, we are not concerned with the aforesaid six specialties. As pointed out above, though for the session 2011-12, the petitioner was permitted to start courses and six specialties out of 9 courses mooted by it, for the academic session 2012-13, Respondent No.4 University granted provisionally affiliation to the petitioner for two more specialties namely (1) Oral Medicines & Radiology and (ii) Oral and Maxillofacial Surgery with an intake of 3 seats each. This was followed by affiliation for the 9th specialty also, viz the Orthodontics and Dentofacial Orthopedics for the academic session 2012-13. In the instant petition, we are concerned with the two disciplines namely Oral and Maxillofacial Surgery as well as Orthodontics and Dentofacial Orthopaedics.

6. As pointed out above, in respect of these two specialties, Respondent No.4 University had given the affiliation and students were admitted by the petitioner-College in these disciplines as well for the academic session 2012-13. However, for the academic session 2013- 14, permission has not been extended for these two specialties although for Oral Medicine and Radiology the requisite approval has been accorded. The events that followed for non-grant of permission in respect of these specialties for the academic session 2013-14 are recapitulated below, briefly:

7. For granting renewal of permission for the aforesaid 2 specialties i.e. Oral and Maxillofacial Surgery and Orthodontics and Dentofacial Orthopedics with three seats each for the academic session 2013-14, the DCI conducted the inspection of the petitioner-college on 8.12.2012 and 9.12.2012. The petitioner was not supplied with the report of the Inspectors but vide letter dated 26.12.2012 and 27.12.2012,

the petitioner was informed by the DCI about the deficiencies in these two specialties. The petitioner, vide letter dated 19.1.2013 and 25.1.2013 submitted compliance report regarding the deficiencies in these two specialties.

8. Thereafter DCI conducted the verification inspection on 14.2.2013 and 18.2.2013. On the basis of this inspection, report dated 18.2.2013 was prepared by the DCI enlisting the deficiencies which according to DCI remained uncured.

9. The DCI, accordingly, vide its letter dated 28.2.2013, recommended to the Central Government not to extend the permission in these two specialties and not to allow the petitioner-college to admit the students in these two specialties for the academic session 2013-14. According to the petitioner, though it was not supplied the copy of the report dated 18.2.2013 but could procure the same and on coming to know of the aforesaid negative recommendation dated 28.2.2013 of the DCI impressing upon Respondent No.1 not to accord permission in these two specialties for the current academic session, the petitioner made a representation to Respondent No.1 and along with the said report it also submitted a comparative statement of the deficiencies. The petitioner also requested for personal hearing. However, without affording any hearing, a decision was taken by the Central Government vide letter dated 30th March 2013, addressed to the petitioner, whereby the permission was declined for renewal of the second year MDS course in the two specialties mentioned above.

10. Aggrieved by this decision, the petitioner preferred the Writ Petition in the High Court of Punjab and Haryana questioning the validity thereof. Apart from contending that the petitioner-college did not suffer from any deficiencies and the order of the Central Government declining the permission of renewal was bad in law, the petitioner also submitted that before taking the impugned decision Respondent No.1 had not granted personal hearing thereby violating the mandatory requirement of the provisions of Section 10A (4) of the Dental Council of India 1948 (hereinafter referred to as the Act).

11. Show cause notice was issued in the said writ and after completion of the pleadings, the matter was heard by the learned Single Judge who has, vide the impugned judgment dated 1.8.2013 dismissed the Writ Petition filed by the petitioner finding no merit in both the contentions raised by the petitioner.

12. The present SLP challenges the said order of the learned Single Judge.

13. The first and foremost contention of Mr. Patwalia, the learned senior counsel appearing for the petitioner was that the High Court had committed a grave error of law in taking a view that no personal hearing was required to be given by the Central Government before passing the order refusing to grant the renewal. Submission was that Section 10A(4) of the Act categorically provides for opportunity of being heard and in the face of such a provision the decision of the High Court on this aspect was palpably wrong,

14. Section 10A of the Act reads as under:

> "10A Permission for establishment of new dental college, new courses of study, etc.
>
> (1) Notwithstanding anything contained in this Act or any other law for the time being in force
>
> (a) no person shall establish an authority or institution for a course of study or training (including a post- graduate course of study or training) which would enable a student of such course or training to qualify himself for the grant of recognized dental qualification' or
>
> (b) no authority or institution conducting a course of study or training (including a post-graduate course of study or training) for grant of recognized dental qualification shall
>
> (i) open a new or higher course of study or training (including a post-graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized dental 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 (includes a post-graduate course of

study or training) in an authority or institution granting recognized dental qualification, 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, authority or institution granting recognized dental qualification shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provision of clause (b) and the Central Government shall refer the said 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, authority or institution concerned, granting recognized dental qualification and thereafter, it may,

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

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

(4) The Central Government may, after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person, authority or institution concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme and any such approval shall be a permission under sub-section (1): Provided that no scheme shall be disapproved by the Central Government except after giving the person, authority or institution concerned granting recognized dental qualification a reasonable opportunity of being heard."

15. A bare reading of sub-section (4) makes it abundantly clear that even the Central Government, before taking a decision on the recommendation of the DCI is required to give a reasonable opportunity of being heard in case it proposes to disapprove the scheme submitted by an educational institution. It was, however, argued before the High Court that such a hearing is required only when the question of permission for establishment of new dental college or new course or studies comes up for consideration and Section 10A does not deal with the cases of renewal of permission. The High Court has accepted this contention of the Government. This becomes apparent from the following discussion contained in the impugned judgment of the High Court:

> "Thus, in my considered opinion, the proviso of section 10(A)(4) of the Act cannot be read in the case of renewal of permission as it deals with a specific situation. Had it been the intention of the Legislature to provide an opportunity of hearing in the case of renewal of permission to be given by the Government of Indian on the recommendation of the DCI, it would have been a part of the Act itself but here is a case in which the petition had admittedly been given an opportunity for rectification of their errors because after first inspection of the DCI, the deficiencies noted were communicated to the petitioner, who allegedly removed the deficiencies and submitted the compliance report and in order to verify the compliance, another inspection team was sent, but still shortcomings/deficiencies were found which cannot be even condoned as it goes against the regulations.
>
> Hence, in the absence of any statutory provision with regard to an opportunity of hearing by the Government of India while with negative recommendations of DCI in the case of renewal of permission, the impugned order dated 30.3.2013 cannot be held to be illegal."

16. With respect to the High Court, we are unable to subscribe to the aforesaid interpretation given to the provision of Section 10A of the Act. No doubt, heading of this section suggests that it deals with "permission for establishment of new dental college, new courses of study, etc." However, holistic reading of the provisions of this section prescribing the scheme containing the procedure for establishment of new dental college and new courses of study etc. would clearly demonstrate that this provision applies even to the cases of renewal of such permission as well.

17. In the present case, as already noticed above, the two courses in question were the new courses, along with other courses, for which permission was given by

Respondent No.1 for the academic session 2012-13. It is a common case that the procedure contained in section 10A for seeking permission, applies to new courses of studies as well. Section 10A(1)(b) deals with opening of new or higher course of study or training as well as increasing its admission capacity in any course of study or training. In both the eventualities prior permission of Central Government is to be obtained. Explanation 2 clarifies the meaning of "admission capacity" in relation to any course of study or training to mean "the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training."

18. When the permission to start courses in two specialties in question was granted for the academic session 2012-13 intake of three students, for seeking renewal for the next academic session 2013-14 it was to seek fresh permission to have the same admission capacity for this year as well. We are, therefore, of the opinion that the cases of renewal cannot be excluded from the provisions of Section 10A of the Act. It was not disputed before us that when the petitioner- college applied for renewal of the permission, the application was processed in accordance with the procedure laid down in section 10A. As per this procedure, when a request is received in the form of a requisite scheme, as required in sub-section (2) of Section 10A of the Act, the same is to be processed in the manner provided under sub-section (3) thereof. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case Scheme it is found to be deficient, sub-section (3) (a) of Section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, any, specified by the DCI. After the recommendation is sent by the DCI to the Central Government, Central Government is required to process the same in accordance with the procedure contained in sub-section (4) of Section 10A. It can either approve or disapprove the Scheme. However, in case the Central Government is proposing to disapprove the Scheme, a final decision in this behalf can be taken only after giving the concerned person, authority or institution, a reasonable opportunity of being heard. This is the mandate of the proviso to Section 10A (4) of the Act.

19. Thus, the procedure prescribed in Section 10A contains the requirement of following this principle of natural justice at two stages. In the first place, by the DCI when it finds deficiencies while examining the school in the second stage at the level of the Central Government before it passes away adverse orders, as it is the final administrative authority vested with powers to pass such an order. The law, thus specifically requires that at the stage of a decision by the Central

Government, again an opportunity of being heard is to be provided. This proviso, thus, acknowledges the need of and confers a very valuable right in favour of the petitioner.

20. In the present case, the petitioner had been accorded permission in these two specialties for the previous academic session. Non- renewal thereof in the present academic session has an adverse affect. It has visited the petitioner with civil and/ or evil consequences barring the petitioner to enroll fresh students in this year. We would like to reproduce the following discussion from the judgment in the case of Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-1 and Anr. (2008) 14 SCC 151

> "15.Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. therefore, the principle implies a duty to act fairly, i.e. fair play in action. As observed by this Court in A.K. Kraipak and Ors. v. Union of India and Ors.[1970]1SCR457 , the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see: Income Tax Officer and Ors.v. Madnani Engineering Works Ltd., Calcutta [1979]118ITR1(SC))
>
> 16. In Swadeshi Cotton Mills v. Union of India [1981]2SCR533 R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, his Lordship observed thus (SCC p.666):
>
> Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) audi alteram partem and (ii) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle - as distinguished from an absolute rule of uniform application - seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post- decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding

the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

17. xxxxxxxxxxxxxxx

18,. Xxxxxxxxxxxxxxxxx

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters

that the question of application of the said principle can be properly determined. (See: Union of India v. Col. J.N. Sinha and Ors. (1970)IILLJ284SC)"

21. It is trite that even in the absence of specific provision of giving hearing, the hearing is required in such cases unless specifically excluded by a statutory provision. In such a situation the proviso to sub-section (4) of Section 10 A has to be liberally construed to encompass the cases of renewal of permission as well.

22. In fact, this case itself provides an excellent example of the importance of such a hearing and adhering to the principle of natural justice viz. audi alteram partem. According to the DCI, even after second inspection some deficiencies were found. On that basis and without confronting the petitioner and further, it sent its report to the Central Government recommending denial of permission. However, as per the petitioner, there were no such deficiencies. It had filed the additional affidavit dated 2.7.2013 in the High Court in its attempt to refute the stand of the DCI regarding deficiencies. To demonstrate, one of the deficiencies pointed out by the DCI was that total number of surgeries/ major as well as minor, conducted by the petitioner- college were far less than the benchmark stated in the Regulations to enable the petitioner to seek renewal of permission. The DCI had stated that there is requirement of one (1) major Surgery and Eight (8) Minor Surgeries per week as per Performa. However, the surgeries performed by the petitioner-college, as per the Performa attached by the college itself was much less then the aforesaid requirements. The petitioner-college sought to clarify and explain this position in its aforesaid affidavit dated 2.7.2013 by pointing out that while calculating the figure, the DCI had taken into consideration PG surgeries only and ignored the figure pertaining to UG surgeries whereas the inspection Performa supplied by the DCI categorically mentioned "both UG and PG together". It was sought to demonstrate that if figures of UG and PG surgeries are taken together, the petitioner-college had satisfied the stipulated requirements. At this juncture, we are not commenting as to whether the aforesaid stand of the petitioner-college is correct or not. We are highlighting the importance, necessity and justification of granting an opportunity of being heard by the Central Government as well, before taking final decision after the report of the DCI is sent to the Central Government which is against the applicant seeking permission for renewal. In that event, if the opportunity of being heard is given, the applicant would get a chance to point out mistakes if any, factual or otherwise, in the report of the DCI and the Central Government would have version of the applicant also before it at the time of taking final decision on the report. In the given case itself on such an opportunity of being

heard given by the Central Government to the petitioner, the petitioner could have explained its stand before the Central Government to enable the Central Government to take a view as to whether it should accept the report of DCI or discard the same finding the explanation of the petitioner thereto, as satisfactory.

23. The significance of principle of natural justice was highlighted in the case of Managing Director, ECIL, Hyderabad, Etc. vs. Karunakar, etc. (1993) 4 SCC 727. Though, it was a case of disciplinary enquiry against an employee, the rationale given justifying the furnishing of enquiry report and giving an opportunity to meet, explain and controvert the same would apply here as well, as would be clear from the following passage in that judgment.

> "The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusion. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which

> may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusion, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it."

24. In fact, judgment of this Court in Priyadarshini Dental College & Hospital Vs. Union of India (2011) 4 SCC 623 throws some light on the issue at hand, though this issue did not come up directly for discussion. That was also a case of renewal of permission. DCI had sent negative recommendation to refuse permission. On receipt thereof, though the Central Government constituted a committee for giving personal hearing and letter in this behalf was also dispatched, such a hearing was not granted and the renewal permission was declined. The petitioner in that case approached the Madras High Court by filing the Writ Petition which was allowed by the High Court on the ground that mandatory requirement of reasonable opportunity of being heard contained in the proviso to Section 10A(4) of the Act was not complied with. The matter was remitted back to the Central Government to take a decision after giving hearing. Hearing was accorded by the committee constituted by the Central Government which recommended the renewal. However, since the last date of 15th July fixed by this Court had expired, while granting the permission the appellant Institute was asked to approach this Court for seeking Court's approval to get the permission after the expiry of the stipulated period. It was held that in view of the specific provisions contained in Dental Council of India (Establishment of New Dental College, Opening of New or Higher Course of Study or Training and Increase of Admission Capacity in Dental Colleges) Regulations, 2006 empowering the Central Government to modify the time schedule for reasons to be recorded in writing, there was no need to direct the appellant to approach this Court for seeking extension and the Central Government could have itself extended the time schedule. In the process, the Bench made certain observations which reflect that even in the case of renewals proviso to sub-section (4) of Section 10A of the Act would be applicable. We reproduce herein below those portions from the judgment:

"The Central Government, sent a general Circular dated 21.6.2010 to all dental colleges in whole cases DCI had recommended that permission should not be renewed, including the Chairmanship of the Director General of Health Services will give a personal hearing to them, as required under the first proviso to Section 10-A(4) of the Act to consider the proposal for renewal of permission for the BDS course for the academic year 2010-11, on 23.6.2010, 24.6.2010 and 25.6.2010. The said letter was dispatached on 22.6.2010 and reached the petitioner College on 25.6.2010, making it impossible for the petitioner College situated at Chennai (Tamil Nadu) to send its Principal/representative for the personal hearing. In the circumstances, the petitioner College by letter dated 25.6.2010, requested for such hearing. However, such hearing was not granted. By communication dated 15.7.2010, the Central Government communicated its decision not to grant renewal permission to the Dental College for the academic year 2010-2011. A consequential direction was issued to the College not to admit students for the academic year 2010-2011.

Feeling aggrieved, the petitioner approached the Madras High Court by filing a writ petition on 19.7.2010 praying that the order of rejection dated 15.7.2010 be quashed and seeking a direction to the Central Government to permit the College to admit fresh students for the BDS course for the academic year 2010-2011 and also seeking a direction to the Central Government to grant renewal permission to conduct the fourth year of the BDS course during the academic year 2010-2011. The said writ petition was allowed by the Madras High Court by order dated 29.7.2010. The High Court held that dispatch of the Letter dated 21.6.2010 on 22.6.2010 fixing the personal hearing on 23.6.2010, 24.6.2010 and 25.6.2010, did not amount to grant of a hearing at all, if the letter reached the College on 25.6.2010, after the time fixed for hearing. It, therefore, held that the mandatory requirement of reasonable opportunity of being heard, required under the proviso to Section 10-A(4) of the Act was not complied with. As a consequence, the High Court remitted the petitioner's application for renewal of permission for 2010-2011, for reconsideration by the Central Government, by giving a due hearing to the petitioner. The High Court also directed the three-member Committee constituted by the Central Government to hear the petitioner on 6.8.2010, consider the documents furnished by it and pass final orders. It also reserved liberty to DCI, if necessary, to make further inspection to verify the correctness of the compliance report submitted by the petitioner College and send a further

report so as to reach the three-member Committee of the Central Government before 6.8.2010."

25. We are, therefore, of the considered opinion that the High Court has not correctly interpreted the provisions of Section 10A of the Act by holding that the cases of renewal of permission would not be covered by this Section and therefore it was not necessary for the Central Government to give opportunity of being heard to the petitioner before rejecting the renewal permission.

26. We, accordingly, sum up the legal position, touching upon the issue, on the interpretation of Section 10A (4) of the Act, as below:

(a) Section 10A applies to the cases of renewal of permission as well;

(b) It contemplates grant of opportunity of being heard at two stages. First stage would be at the level of DCI after the scheme is submitted to DCI under sub-section (2) of Section 10A of the Act. Once it is found by the DCI that all the parameters for granting permission are met, it recommends the grant of approval of the scheme to the Central Government. In case Scheme it is found to be deficient, sub-section (3) (a) of Section 10A of the Act casts an obligation on the part of the DCI to give a reasonable opportunity for making a written representation and also to rectify the deficiencies, if any, specified by the DCI. Second stage of adherence to the principles of natural justice is provided at the level of Central Government at the time when it has to take final decision, after the receipt of the recommendation sent by the DCI. This requirement of hearing is stipulated in proviso to sub-section (4) of Section 10A, in the event the Central Government is proposing to disapprove the scheme.

(c) The expression "opportunity of being heard" occurring in this proviso would mean that the material that goes against the applicant and is to be taken into consideration, is to be supplied to the applicant within an opportunity to make representation. For this purpose either the report of the DCI itself can be supplied or atleast the deficiencies pointed out in the report have to be communicated by the Central Government to the applicant with an opportunity to furnish its comments thereupon. At that stage while giving its reply, if the applicant claims personal hearing, such a personal heaing should also be accorded.

27. As in the present case, since no such opportunity of being heard the requirement of proviso to sub-section (4) of Section 10A of the Act was not afforded to the petitioner, the decision dated 30th March 2013 of the Central Government warrants to be set aside on this ground alone.

28. Notwithstanding the aforesaid discussion clarifying the position in law on this aspect which goes in favour of the petitioner, other circumstances appearing in this case desist us from giving the relief to the petitioner that is claimed by it in so far academic session 2013-2014 is concerned. The effect of the aforesaid view taken by us would be to set aside the orders dated 30th March 2013 passed by the Central Government rejecting the request of renewal. However, from that it would not automatically follow that direction can be issued to the Central Government to accord such a permission. This Court could only remit the case to the Central Government to pass appropriate orders after giving hearing to the petitioner. However, it is too late for the Central Government to re-examine the issue for the current academic session. Fact remains that as per the report of the DCI, there are deficiencies. Deficiencies are not limited to the number of minor and major surgeries which are required to be performed by a College for second renewal. The argument of the petitioner that while calculating the number of surgeries, both PG and UG surgeries are to be taken into consideration was countered by Mr. Rakesh Khanna, learned ASG. This is, therefore, an aspect which the Central Government is supposed to examine. However, there are other deficiencies mentioned by the DCI also in its report. With respect to Oral Scheme the DCI found the following deficiencies:-

> "(i) Clinical training is not upto the mark.
>
> (ii) Back volumes are not available for last ten years.
>
> (vi) No. of cases operated in GA and LA are inadequate.
>
> As far as Ortho Scheme is concerned, the deficiencies noted in the report of DCI are as follows:
>
> "(i) University affiliation letter dated 27.3.2013 from Pt. B.D. Sharma University states that the college does not comply for the removal of deficiencies.
>
> (ii) There is deficiency of number of journals.

(iii) Irregular supply of journals.

(iv) Back volumes are available only from 2011.

(v) There is deficiency of clinical material.

(vi) Inspectors have pointed out that the clinical material in the specialty and the OPB are not tallying."

29. As per DCI report, deficiency in the Laboratory maintained by the petitioner was also found in respect of the specialties of Oral scheme. It is stated by the DCI that the Dental Institutions are supposed to maintain the Library at two levels. One is called a Central Library which is mainly maintained by UG level and other is maintained by PG in each and every specialty department. The DCI inspected each specialty and report is submitted by the Inspector in respect of each specialty. The deficiency has been pointed out in respect of the specialty of Oral stream that the petitioner does not have the back volumes of journals for the last 10 years. Thus, DCI reported that despite repeated inspections, the deficiencies have been found. In respect of Ortho scheme as well similar deficiencies are pointed out. Therefore, this Court cannot issue any mandamus straightaway and the petitioner is required to give its satisfactory explanation qua the aforesaid deficiencies to the Central Government. However, the time has run out in so far current year is concerned. The session in respect of PG streams started on 15th July 2013. The necessary admissions have already been given to the students in different colleges. On remitting the matter, some time will have to be given to the Central Government as well for taking a fresh decision. If that is also taken into account, by the time decision is taken, the present academic session would have progressed significantly. This Court in number of cases highlighted the importance of the cut off date for starting of courses impressing upon that such deadline should not be extended. (See: Priya Gupta vs. State of Chhattisgarh (2012) 7 SCC 433 and Maa Vaishno Devi Mahila Mahavidyalaya vs. State of U.P. (2013) 2 SCC 617)

30. For the aforesaid reasons, we are of the view that in so far as the academic session 2013-14 is concerned, it is not possible to put the clock back. Thus, while setting aside the impugned orders and remitting the case back to the Central Government for taking fresh decision, we make it clear that it would not relate to the academic session 2013-14. However, the case can be considered for renewal of permission for the next academic session on the basis of existing material. For this,

hearing should be given to the petitioner to demonstrate that they have overcome the deficiencies and they no longer exist. If the Central Government is satisfied on these aspects it may grant renewal permission for the next academic session 2014-15. In case the renewal of permission is rejected, the petitioner will have to undergo the process of seeking fresh permission for next academic session i.e. 2014-15 by submitting fresh scheme/proposal to the DCI for that year, as per the procedure prescribed in the Act & Regulations.

31. The Special Leave Petition is disposed of in the above terms. No costs.