

SUPREME COURT OF INDIA

Royal Medical Trust (Regd) & Anr.

Vs.

Union of India & Anr.

W.P.(Civil)No.705/2014

(Anil R. Dave,J.,Vikramajit Sen and Uday Umesh Lalit,JJ.,)

20.08.2015

JUDGMENT

Uday Umesh Lalit,J.,

1. These petitions (except SLP(C) Nos.22785 of 2014 and 27034 of 2014) arise out of communications issued by the Central Government recommending disapproval of applications preferred in respect of Medical Colleges of the applicants for the academic year 2014-2015. In these petitions, after conducting inspection of the respective Medical Colleges the Medical Council of India (MCI for short) had found infirmities or inadequacies in the infrastructure, facilities and faculty. The respective applicants then claimed that they had rectified the shortcomings and asked for compliance verification. But the Central Government and/or the MCI refused to undertake any fresh inspection for verification, for want of adequate time. This being the common feature in all these petitions, they were heard together and are being disposed by this common judgment.

2. Broadly the categories of Medical Colleges presently before the Court are:-

“(I) Cases where new Medical Colleges are sought to be established for the first time and where such colleges are seeking appropriate permission to admit students to the first year of MBBS course namely:-

(1) WP(C) No.700/2014, (2) WP(C) No.705/2014 (3) WP(C) No.819/2014 (4) SLP(C) No.22757/2014 (5) SLP(C) No.22756/2014 (6) SLP(C) No. 24913/2014 (7) SLP (C) No. 23512/2014. The Respondent in this petition has also preferred Transfer Petition (C) No.1217 of 2014 to have his writ petition pending in the High Court of Bombay to be transferred to this Court.

(II) Cases where the existing approved Medical Colleges are seeking increase in intake of seats for admissions of students to the first year of MBBS Course namely:

(1) WP(C) No.523/2014

- (2) WP(C) No.707/2014
- (3) WP(C) No.862/2014.

(III) Medical Colleges seeking renewal of permission, who have already received permission in the previous year(s) either for establishing new Medical College or for increasing intake capacity of the existing Medical College. In this category of cases, the renewal for subsequent batches and for permission to admit students to the first year course is sought namely:

WP(C) No.784/2014 (2) WP(C) No.799/2014 (3) SLP(C) No.21517/2014 (4) SLP(C) No.21765/2014 (5) SLP(C) No.22755/2014 (6) SLP(C) No.26758-59/2014 (7) SLP(C) No.23476/2014 (8) SLP(C) No.23528-29/2014 (9) SLP(C) No.24154/2014 (10) SLP(C) Nos.24150-51/2014 (11) SLP(C) No.24665/2014 (12) SLP(C) No.24754-55/2014 (13) SLP(C)No.25763/2014 (14) SLP(C) No. 25468-69/2014 (15) SLP(C)No.22974 /2014 (16) SLP(C) Nos.26296-97 /2014 and (17) SLP(C) Nos.26768-69/2014.”

3. Reduction in seats in a Dental College is challenged in Special Leave Petition (C) No.22785 of 2014. This being a completely distinct matter, is de-tagged and it be listed before an appropriate Bench. Further SLP(C) No.27034 of 2014 is filed in public interest by an individual claiming that as on 23.09.2014 about 76 seats were lying vacant in different colleges in Jharkhand. No separate orders are called for in this petition and it be taken to be disposed of in the light of our discussion hereinafter.

STATUTORY PROVISIONS

4. The statutory provisions concerning permission for establishment of new Medical College and for increase in intake are to be found in Section 10A of the Indian Medical Council Act, 1956 (hereinafter referred to as the Act) and the Regulations framed under the Act. Said Section 10A is as under:-

“10A. PERMISSION FOR ESTABLISHMENT OF NEW MEDICAL COLLEGE, NEW COURSE 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 a medical college

(b) no medical college shall:-

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

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.
Explanation 1 - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

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

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

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

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

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

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

4. The Central Govt. may after considering the Scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (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 (1).”

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

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

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

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

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

(c) whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of 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;
- (g) and 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.”

5. Section 10A contemplates submission of a Scheme to the Central Government in prescribed form, which Scheme is then to be referred by the Central Government to the MCI for its appropriate recommendations. The Scheme is to be considered having regard to the features referred to in Sub-Section 7 and is then placed before the Central Government along with the recommendations of the MCI. In exercise of powers conferred by Section 10A read with Section 33 of the Act, the MCI with the previous sanction of the Central Government has made “Establishment of the Medical College Regulations, 1999” (hereinafter referred to as the Regulations) which were published in the Gazette of India on 28.8.1999. Paragraph 3 of the Regulations lays down that no person shall establish a medical college except after obtaining prior permission of the Central Government by submitting a Scheme. The Regulations then deal with the Scheme in extenso. Clauses 1 and 2 of the Scheme deal with ‘Eligibility Criteria’ and ‘Qualifying Criteria’ respectively. Clause 3 then sets out certain requirement in Parts (i), (ii) and (iii) concerning various details about the status of the applicant in terms of the eligibility criteria, name and address of the Medical College including various facets of the infrastructure and planning and the details of the existing hospital including availability of various facilities and capacities as also upgradation and expansion programme.

6. Paragraph 7 of the Regulations deals with report of the MCI while Para 8 deals with grant of permission by the Central Government. Paragraphs 7 and 8 of the Regulations are as under:-

“7. REPORT OF THE MEDICAL COUNCIL OF INDIA:

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

1. that the applicant fulfils the eligibility and qualifying criteria. that the person has a feasible and time bound programme to set up the proposed medical college alongwith required infrastructural facilities including adequate hostels facilities separate for boys and girls, and as prescribed by the Council, commensurate with the proposed intake of students, so as to complete the medical college within a period of four years from the date of grant of permission;

3. that the person has a feasible and time bound expansion programme to provide additional beds and infrastructural facilities, as prescribed by the Medical Council of India, by way of upgradation of the existing hospital or by way of establishment of new hospital or both and further that the existing hospital has adequate clinical material for starting 1st year course.

4. that the person has the necessary managerial and financial capabilities to establish and maintain the proposed medical college and its ancillary facilities including a teaching hospital.

5. that the applicant has a feasible and time bound programme for recruitment of faculty and staff as per prescribed norms of the Council and that the necessary posts stand created.

6. that the applicant has appointed staff for the 1st year as per MCI norms.

7. that the applicant has not admitted any students.

8. Deficiencies, if any, in the infrastructure or faculty shall be pointed out indicating whether these are remediable or not.

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

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

(i) its reasons for not granting the Central Government permission; and

(ii) documents/facts on the basis of which the Council recommends the disapproval of the Scheme.

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

RECONSIDERATION Wherever the Council in its report has not recommended the issue of Letter of Intent to the person, it may upon being so required by the Central Government reconsider the application and take into account new or additional

information as may be forwarded by the Central Government. The Council shall, thereafter, submit its report in the same manner as prescribed for the initial report.”

“GRANT OF PERMISSION:

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

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

(3) 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.”

7. Paragraph 8 of the Regulations states that permission to establish new Medical College may be granted initially for a period of one year and would be renewed on yearly basis subject to verification of the achievements of annual targets. The process of renewal of permission continues till such time that the establishment of the Medical College and expansion of hospital facilities are completed and formal recognition is granted to the Medical College. A Medical College which gets initial permission to establish and admit first batch of students will thus be required to seek renewal till such time that it gets formal recognition and the students admitted in the first batch are ready to pass out and secure recognized medical qualification. This

process thus continues for five years and Category No. III as stated herein above are cases of such Medical Colleges.

8. The Schedule to the Regulations sets out various stages dealing with processing of applications preferred by the Medical Colleges and how the matter is to be dealt with at various stages. This schedule has undergone changes over a period of time. The schedule as it existed originally was as under:-

“SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

| Sl. | Stage of processing | Last Date | No |
|-----|-------------------------------|-----------------|----|
| 1. | Receipt of applications by | From 1st August | |
| 2. | Receipt of applications by | 30th September | |
| 3. | Recommendations of the | 31st December | |
| 4. | Issue of letter of intent by | 31st January | |
| 5. | Receipt of reply from the | 28th February | |
| 6. | Receipt of letter from the | 15th March | |
| 7. | Recommendations of the | 15th June | |
| 8. | Issue of letter of permission | 15th July | |

Note.—(1) The information given by the applicant in Part I of the application for setting up a medical college that is information regarding organisation, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinised by the Medical Council of India through an inspection and thereafter the Council may recommend issue of letter of intent by the Central Government.

(2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be made without prior approval of the Central Government.”

9. After the amendment vide Notification published on 28.08.2009 the Schedule underwent some modifications namely, as against serial numbers 3, 4, 5, 6, 7 and 8 the dates as modified were; 15th December, 15th January, 15th February, 1st March, 15th May and 15th June respectively. Notes 1 and 2 were not modified at all and continued to remain as they were.

10. The Regulations were further amended by Amendment Notification dated 21.09.2012 which was published in the Gazette of India on 1.10.2012. It substituted the Schedule and added a Note. The relevant portion of the Notification is as under:-

“1. (i) These Regulations may be called the “Establishment of Medical College Regulations, (Amendment), 2012:

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

6. In The “Establishment Of Medical College Regulations, 1999”, In “Schedule For Receipt Of Application For Establishment Of New Medical Colleges And Processing Of The Applications By The Central Government And The Medical Council Of India”, The Following Shall Be Substituted As Under:-

Schedule For Receipt Of Applications For Establishment Of New Medical Colleges And Processing Of The Applications By The Medical Council Of India.

| Sl. No. | Stage of processing | Last Date |
|---------|--|--|
| 1 | Receipt of applications by the Council | From 1st August to 31st August (both days inclusive) of any year |
| 2 | Issue of Letter of Intent by the Council | 30th April |
| 3 | Receipt of reply from the applicant by the Council for consideration for issue of Letter of Permission | 31st May |
| 4 | Issue of Letter of Permission by the Council | 15th June |

Note : The time schedule indicated above may be modified by the Central Government, for reasons to be recorded in writing, in respect of any class or category of applications.

Note.—(1) The information given by the applicant in Part I of the application for setting up a medical college that is information regarding organisation, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinised by the Medical Council of India through an inspection and thereafter the Council may recommend issue of letter of intent by the Central Government.

(2) Renewal of permission shall not be granted to a medical college if the above schedule for opening a medical college is not adhered to and admissions shall not be made without prior approval of the Central Government.”

EARLIER DECISIONS OF THIS COURT

11. The schedule to the Regulations, the stages mentioned therein regarding processing of applications and the requirement to adhere to the dates specified therein, were considered by

this Court in some cases. *In Mridul Dhar v. Union of India*¹ this Court was primarily concerned with matters giving full effect to 15% All India Quota seats available in all medical colleges run by the Union of India or the State Government or Municipal or other local authorities by strictly adhering to the time schedule. While so considering, this Court in para 28 quoted the Schedule as it existed then, namely, the one referred to in paragraph 8 hereinabove. In paragraph 35 this Court issued certain directions and direction Nos.14 and 15 were to the following effect

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

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

12. *In Priyadarshini Dental College and Hospital v. Union of India and others*² this Court was called upon to consider the implications of similar such Schedule annexed to the Regulations of Dental Council of India. The statutory provisions and the Regulations under the Dentists Act, 1948 are *pari materia* with those in the present case. Note No.2 below the Schedule to the Regulations of Dental Council of India enables the Central Government, for reasons to be recorded in writing, to modify the Schedule in respect of any class or category of applications. In this backdrop paragraph Nos.19 and 20 of the decision in *Priyadarshini* are reproduced hereunder:

“19. Regulation 11(2) clearly lays down a time schedule for the submission of applications for renewal of permission (six months prior to the expiry of the current academic session), for recommendation by DCI (15th June) and for issue of final orders by the Central Government regarding renewal of permission (15th July). Though, the DCI Regulations provide that the last date for issue of letter of permission or renewal of permission by the Central Government is 15th July, having regard to the scheme relating to grant of renewal of permission and Note 2 to the Schedule, the Central Government has the discretion to modify the time schedule in appropriate cases, for reasons to be recorded, in respect of any class or category of applications.

20. If the Central Government was of the view that a dental college deserved renewal of permission in accordance with the Act and the Regulations, it should grant such permission. If it was of the view that the dental college did not deserve renewal of permission, it should refuse the permission. If the Central Government felt that the last date for granting renewal of permission was over and there was no justification for extending the time schedule, it could refuse the renewal of permission on that ground. On the other hand, if the Central Government was of the view that the applicant College had complied with the requirements and was not at fault, and it was not responsible in any manner for the delay in considering the application, and there were other applicants of similar nature, it could have recorded those reasons in

writing and extended the time schedule for that category of applicants and then granted the renewal of permission, provided the last date for admissions had not expired. Note 2 to the Schedule to the DCI Regulations enables the Central Government to modify the time schedule, for reasons to be recorded in writing, in respect of any class or category of applications. The applicants for renewal of permission for the fourth or fifth year, where there is compliance with the requirements relating to infrastructure, equipment and faculty, could be such a class or category of applications. Similarly, applications where the High Courts have directed consideration beyond 15th July in view of special circumstances can also constitute a class or category of applicants.” During the course of its Judgment in Priyadarshini under caption “A Suggestion for modification of time Schedule” this Court in paragraphs 23 to 25 observed as under:

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

24. In the context of what has happened in these cases, it is necessary to emphasise the distinction between the applications for fresh permissions and applications for renewal of permissions. They require distinct time schedules. The process of decision-making under the Regulations, for grant of fresh or initial permission for establishment of new dental colleges is exhaustive and elaborate, when compared to the process of decision-making in regard to grant of renewal of permission for the four subsequent years. Before grant of initial grant of permission, the DCI and the Central Government are required to consider the following aspects: whether the institution would be in a position to offer the minimum standards of dental education in conformity with the Act and the Regulations; whether the institution has adequate resources; whether the institution has provided or will provide within the time-limit specified in the scheme, necessary staff, equipment, accommodation, training and other facilities to ensure proper functioning of the institution; whether the institution has provided or would provide within the time-limit specified in the scheme, adequate hospital facilities; whether faculty having recognised dental qualifications and personnel in the field of practice of dentistry will be available to impart proper training to the students; and whether other factors prescribed by the Regulations have been complied. On the other hand, for the purpose of grant of renewal of permission,

DCI has to make recommendations by considering only whether the prescribed faculty and infrastructure are available.

25. The need for renewal of permission emanates from the fact that a newly established college is not required to have in place, full complement of the teaching faculty and complete infrastructure in the first year itself. This is because, during the first year, the college will be catering only to a limited number of first year students. During the second, third and fourth and fifth years, the student strength will increase. If the permitted intake is 100, usually there will be 100 students in the first year, 200 students in the second year, 300 students in the third year, 400 students in the fourth year and 500 students in the fifth year. Thereafter, the strength may remain constant. As the strength increases gradually every year, correspondingly the infrastructure and faculty will have to be increased.”

13. In a subsequent decision in *Priya Gupta v. State of Chhattisgarh and others*³ this Court in paragraph 32 reproduced the Schedule and the Notes thereunder as referred to in Mridul Dhar and in paragraph 40 it was stated thus:

“40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.” The relevant directions issued in *Priya Gupta* by this Court in paragraphs 46.1 46.3. 46.4. 47, 47.1 and 47.5 were as under: “46.1. The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

46.3. After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counselling, in accordance with the Rules.

46.4. Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not

be included in the counselling to be conducted by the authority concerned and that college would have no right to make admissions in the current academic year against such seats.

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

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such institution/State, etc. 47.5. The college which grants admission for the current academic year, where its recognition/approval is granted subsequent to 15th July of the current academic year, shall be liable for withdrawal of recognition/approval on this ground, in addition to being liable to indemnify such students who are denied admission or who are wrongfully given admission in the college.” It may be mentioned here that the Schedule as it stood then, when this Court rendered its Judgment in Priya Gupta did not enable the Central Government to modify the schedule, as was permissible under the concerned Dental Council of India Regulations considered by this Court in Priyadarshini. On and with effect from 01.10.2012 i.e. after the Judgment in Priya Gupta, the substituted Schedule now empowers the Central Government to that effect.”

14. It may further be mentioned that while considering the provisions of the Act and the Medical Council of India Regulations on Graduate Medical Education, 1997, this Court in *Medical Council of India vs. Madhu Singh*⁴ in para 23 had directed inter alia:-

“(i) There is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education;

(iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

(vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.” THE PRESENT CASES”

15. In the instant cases, during inspections conducted by the MCI in respect of Medical Colleges falling in Categories I, II and III as stated above, certain deficiencies were found which were then communicated to the concerned applicants. According to the concerned applicants, either the deficiencies were wrongly noted or they had since then been rectified and compliance was reported. Though compliance was so reported and the Central Government / the MCI were asked to have inspection to verify such compliance, the Central Government communicated its disapproval without taking any steps to assess or verify the compliance report. By way of illustration we may set out relevant facts in Writ Petition (C) No.705 of 2014 which are as under:-

“(a) The scheme under Section 10A of the Act for establishing a new medical college by the applicant was placed before the Scrutiny Committee of the MCI on 22.01.2014. The deficiencies in certain documents pertaining to land and finance having been pointed out, the concerned documents were furnished by the applicant on 07.02.2014. The matter was then placed before the Executive Committee of the MCI on 14.03.2014 which decided to accept the application subject to compliance of certain requirements. These were complied with by the applicant on 14.04.2014.

(b) A surprise inspection was undertaken on 26.05.2014 and 27.05.2014 in which certain deficiencies in infrastructure, faculty and clinical material were found. Considering these deficiencies to be serious, the Executive Committee of the MCI decided to disapprove the application and the decision was so communicated to the Central Government on 14.06.2014.

(c) On 26.06.2014 the applicant reported compliance and submitted that the deficiencies stood removed. A Committee appointed by the Central Government to grant personal hearing to all such colleges where negative recommendations were given by the MCI, granted personal hearing to the applicant and forwarded compliance report dated 26.06.2014 for verification and appropriate action.

(d) The Executive Committee of the MCI however in its communication dated 10.07.2014 stated that no compliance/verification could be undertaken for the academic year 2014-15. Thereafter Central Government vide its letter dated 15.07.2015 disapproved the scheme submitted by the applicant in view of the inability of the MCI to assess/verify the compliance.

(e) In the circumstances the applicant filed Writ Petition (C) No.705 of 2014 in this Court submitting, inter alia, that the inspection was conducted almost after eight months thereby pushing the matter to such levels where it became impossible for the MCI to assess the compliance report and that the MCI ought to have paced itself in accordance with mandatory time schedule so that all the stages could possibly and effectively be undertaken before the dead line mentioned in the Schedule.

(f) In reply it was submitted by the MCI that every applicant submitting a scheme is obliged to fulfill minimum norms as on the date of application but generally such

applicants request for postponement of inspection so that they get additional time to put their house in order. Resultantly the inspection teams appointed by it are under tremendous workload in and around April/May. It further submitted that it had obtained legal opinion to the effect that in view of the decision in Priya Gupta it was impermissible to undertake any inspection after 15th of June and as such no verification of compliance report could be undertaken.

16. The facts mentioned above as obtaining in Writ Petition (C) No.705 of 2014 are illustrative and the fact situation so also the submissions in the other matters are more or less identical and the communications of disapproval by the Central Government in concerned cases were also on the same date i.e. on 15.07.2014. In most of the matters the applicants approached this Court under Article 32 of the Constitution of India while in some cases they went to the High Court. In certain cases the High Court directed the Central Government and the MCI to undertake fresh inspection. These orders, at the instance of the MCI are under challenge, in which this Court suspended the operation of directions so issued by the High Court. In some cases the High Court did not grant any interim relief and the applicants have preferred special leave petitions challenging the correctness of such refusal.

INTERIM DIRECTIONS

17. During the course of hearing, an affidavit was filed on behalf of the Union of India on 18.09.2014 stating inter alia,

“(i) The total intake capacity of MBBS seats in the country increased from 51598 in 2013-2014 to 54348 in 2014-2015. However renewal of seats was not permitted in case of 3920 seats in 2014-2015 and as such there was a net loss of 1170 MBBS seats in 2014-2015.

(ii) The MCI had recommended for disapproval of renewal in case of 8667 seats. However renewal permission in case of 4747 MBBS seats in 73 Government Medical Colleges was granted by the Central Government on the last day i.e. 15.07.2014, by relying on the undertaking/compliance given by respective State Governments.

(iii) The Central Government issued disapproval letters to 46 Medical Colleges including 41 Private Medical Colleges with 3685 MBBS seats and 5 Government Medical Colleges with 235 seats for the year 2014-2015.”

18. Since the deadline for effecting admission as per Medical Council of India Regulations on Graduate Medical Education, 1997 namely 30.09.2014 was approaching and large number of seats were involved because of recommendations for disapproval without having assessed or verified compliance as reported by the applicants, the matters were considered for grant of suitable relief. The Medical Colleges in Category III as mentioned above alone were considered fit to be granted such relief as they were all renewal cases. All these Medical Colleges had received permission to set up and/or to increase the intake in previous year(s). The cases in Category III being renewal cases were considered differently as against other

cases in the light of the law laid down in Priyadarshini. This Court therefore by orders dated 18.09.2014 and 25.09.2014 permitted all the medical colleges falling in category No.III to give fresh admissions in the first year of the M.B.B.S. Course subject to certain conditions mentioned in those orders. The Medical Colleges in that category were required to file an undertaking on same terms as Government Medical Colleges that there was no deficiency and that if the undertaking so submitted was found to be incorrect in the next inspection, their deposit with the MCI, which was around Rs.10 crores, would be forfeited by way of penalty. It was further directed that admissions could be given to only those students from the merit list prepared by the respective States and that the students would be charged fees prescribed by the Government Medical Colleges of the respective States. These orders were passed as the concerned medical colleges had already received permission to establish new medical college or to increase the intake capacity and the matters in issue were only concerning renewal permissions and as the concerned colleges had statedly removed deficiencies and submitted their compliance reports.

SUBMISSIONS

19. The matters were thereafter taken up for hearing. By this time the dead line for effecting admissions for the academic year 2014-15 was over. The learned counsel appearing for various applicants as well as the counsel appearing for the Union of India and the Medical Council of India were heard on the Statutory Scheme as well as parameters to be considered at various stages, time schedule in the Regulations and the requirement to adhere to such time schedule. We heard Mr. Kapil Sibal, Dr. Rajeev Dhavan, Mr. Vishwanath Shetty, Mr. Mohan Parasaran and Mr. Nidhesh Gupta, learned Senior Counsel appearing for various applicants, Mr. Vikas Singh, learned counsel for MCI and Ms. Pinky Anand, learned Additional Solicitor General for the Union of India. We must record our sincere appreciation for the assistance rendered by the learned Counsel.

20. It was submitted on behalf of the applicants that: Section 10A of the Act read with the Regulations and the Scheme framed thereunder contemplates certain initial pre-requisites such as Essentiality Certificate, Consent of Affiliation, a suitable plot of land as prescribed and a three hundred bed hospital with necessary infrastructure and facilities. If these qualifying pre-requisites are not met, the permission to establish a medical college will certainly not be granted. However, in none of the present cases, the denial or disapproval was on account of inability to meet these qualifying pre-requisites. According to sub-section (7) of Section 10A, the Scheme and the Regulations, certain requirements like necessary facilities in respect of staff, equipment, accommodation, training as well as hospital facilities could be provided within the time limit specified in the Scheme. Unlike the qualifying pre-requisites as stated earlier, these facilities could be put in place and made effective at a later point of time. Reading of sub-sections (3) , (4) and (8) of Section 10A read with Clauses 7 and 8 of the Regulations as well as the underlying idea behind sub- section (7) of Section 10A would show that the concerned applicant ought to be afforded time and sufficient opportunity to rectify the deficiencies. Reliance was placed on the decision of this Court in *Swamy Devi Dayal Hospital & Dental College vs. Union of India*.^[5] The compliance having been reported, the MCI and the Central Government were obliged to assess whether

such deficiencies stood removed or not. Inability of the MCI to perform its statutory obligation and initiate appropriate action within the time frame has penalized the respective colleges for no fault of theirs.

(e) The MCI and the Central Government must arrange their affairs in such a way that the respective stages in the Schedule are adhered to, affording reasonable opportunity to the concerned medical colleges to rectify the deficiencies. Having pushed the concerned colleges close to the dead line, the MCI and the Central Government cannot then take refuge under the Schedule and project their inability to carry out any compliance verification.

(f) The Note under the Schedule to the regulations, as brought in by Amendment Notification dated 21.9.2012 sufficiently enabled the Central Government to modify the time schedule, as laid down by this Court in Priyadarshini. The Central Government did make an exception and modified the time limits in the Schedule in favour of Government medical colleges. Similar such benefit ought to have been extended in favour of the private Medical Colleges as well.”

21. Mr. Vikas Singh, learned Senior Advocate submitted that the Scheme contemplated that the concerned applicants must have the necessary facilities, faculty and infrastructure in existence and operational as on the day the application was made. He submitted that most of the applicants themselves would request the MCI to conduct inspections as late as possible, which would give additional time to the concerned applicants to put the facilities in order. In these circumstances, the inspections were carried out in the months of April and May. In his submission, because of mandatory directions in Priya Gupta, the MCI refused to undertake any inspection for compliance verification. He however fairly accepted that in view of sub section (4) of Section 10 A of the Act, before any disapproval of Scheme was recorded, reasonable opportunity ought to have been given and that such opportunity is available even in Renewal Cases in Category III. During the course of submissions he submitted Draft Schedules, one pertaining to applications for Establishment of new Medical Colleges and increase of admission capacity while the other relating to cases of Renewal of Permission in an existing Medical College. Those Draft Schedules are set out hereunder:-

Schedule for receipt of applications for establishment of new medical colleges and increase of admission capacity in an existing medical college and processing of the applications by the Central Government and the Medical Council of India.

“| Stage of processing | Last date |
| 1. | Receipt of applications by the | From 1st August to |
| Central Government and Submission of | 31st August (both | | Standard Assessment
Form, Declaration | days inclusive) of | | Forms of the Faculty members and | any year. |
| Resident Doctors & other documents by | | the applicant to the MCI. | | 2. | Receipt
of applications by MCI from | 30th September | | the Central Government. | | 3.
| Technical Scrutiny of the | 31st October | | applications by the MCI. | | 4. | Return of
defective/incomplete | 30th November | | applications by MCI to the Central | |

Government || 5. Physical assessment of the applicant |31st January. || medical colleges & communication of || deficiencies to the medical colleges || and to the Central Government. || 6. Hearing by the Central Government |1st to 20th || Under section 10A(4). |February |7. Forwarding of Representation/ |28th February | |Compliances by the Central Government| || to the MCI in cases where compliance || verification is required. || 8. Compliance Verification assessment by|30th April || the MCI. || 9. Recommendations of the MCI to the |15th May | | Central Government for issuance of || letter of permission/disapproval of || |the application. || 10. Issue of letter of permission by the |15th June. || Central Government. || SCHEDULE IN THE CASES OF RENEWAL OF PERMISSION IN AN EXISTING MEDICAL COLLEGE BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA | Stage of processing |Last date | 1. Submission of Standard Assessment |30th September || Forms, Declaration Forms of the Faculty| || Members and Resident Doctors & Other || | Documents by the medical college to the || MCI. || 2. Physical assessment of the medical |31st January || colleges & communication of || deficiencies to the medical college and| || to the Central Government || 3. Hearing by the Central Government Under|1st to 20th || Section 10A(4) |February | 4. Forwarding of |28th February | | Representation/Compliances by the || Central Government to the MCI in cases || | where compliance verification is || required. || 5. Compliance verification assessment by |15th May || the MCI & Recommendations of the MCI to| || the Central Government for issuance of || letter of permission/or not to grant || |renewal of permission. || 6. Issue of letter of permission by the |15th June || Central Government || DISCUSSION

22. We grant special leave to appeal in all the matters in categories I and III.

23. While considering the Scheme under Section 10A of the Act, the MCI and the Central Government are required to have due regard to the factors referred to in sub-section (7) thereof. If the initial Scheme itself is found to be defective or is to be disapproved, sub-section (3)(a) and proviso to sub-section (4) of Section 10A oblige the MCI and the Central Government respectively to grant to the applicant reasonable opportunity to rectify the defects and of being heard. The Statute thus recognizes that before any adverse decision is taken as regards the Scheme, the applicant must be afforded reasonable opportunity. This facet has been considered by this Court while dealing with issues under Section 10A of the Dentists Act in Swami Devi Dayal. It was laid down that the requirement of following the principles of natural justice is available at two stages, first where the Dental Council of India finds deficiencies during its inspection and secondly at the level of the Central Government before it passes any adverse orders after receipt of the recommendations by the Dental Council of India. The observations in Swami Devi Dayal while considering provisions of Section 10A of the Dentists Act which are *pari materia* with Section 10A of the Act, must apply with equal force in relation to cases under the Act. In paragraphs 22.2 and 22.3 it was laid down in Swami Devi Dayal as under :

“22.2 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 is found to be deficient, sub section (3) (a) of Section 10 A 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.

22.3 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 hearing should also be accorded.”

24. The Scheme under Section 10A, with due regard to the factors referred to in sub-section (7), may contemplate putting in place necessary facilities at a later point of time. Paragraphs 7(b) and 8(3) of the Regulations also speak of defining and achieving annual targets respectively. Naturally, it needs to be assessed and verified whether such annual targets are achieved or not. The timely assessment is integral to the Scheme itself and the MCI and the Central Government are therefore obliged and required to conduct renewal inspections every year so as to ensure that the establishment of the Medical College and expansion of hospital facilities are completed in time and in accordance with the Scheme. In *Swamy Devi Dayal* it was observed that the provision requiring such opportunity being given to the applicant applies not only at the initial stage when permission for establishment of new College is under consideration but must apply even in cases of subsequent renewal of such permission. In our view, the ratio in *Swamy Devi Dayal* must apply as regards cases of renewal under the Act.

25. As regards cases of renewal, it was laid down in *Priyadarshini* that the process of decision making for grant of fresh or initial permission for establishment of a new college is exhaustive and elaborate when compared to such decision making in regard to grant of renewal of permission for the four subsequent years. It was further stated that before grant of initial permission the aspects whether the institution would be in a position to offer the minimum standards of education in conformity with the Act and Regulations and whether the institution has adequate resources and whether the institution has provided or will be able to provide within the time limit specified in the Scheme all the required facilities and faculty are required to be considered and scrutinized very closely. On the other hand for the purposes

of grant of renewal what is required to be considered is whether the prescribed faculty and infrastructure is available. Considering renewal cases on a parameter distinct and different from that relating to establishment of a new college for the first time, it was observed that the entire process of verification and inspection relating to renewal ought to be done well in time so that the existing colleges have adequate and reasonable time to set right the deficiencies or offer explanation to the deficiencies.

26. In the light of the aforesaid facets namely that the Scheme under Section 10A may itself contemplate stage wise achievement of annual targets and the requirements of reasonable opportunity to be afforded not only at the initial stage but also in cases of subsequent renewal and further that the opportunity must be afforded at both the stages namely by the MCI as well as by the Central Government, the Schedule under the Regulations must accommodate and provide for adequate time limits to take care of such eventualities. The Schedule which was brought in force by way of an amendment dated 21.09.2012 unfortunately does not provide for such stage wise consideration. It simply gives four stages without indicating any time limits to ensure grant of such reasonable opportunity in case the decisions of disapproval are taken against the applicants. It also does not speak of any compliance verification. The pattern that emerges in the present cases is common and consistent in that the inspections were undertaken in and around April/May 2014 and the letters of disapproval were sent by the Central Government on or about 15th July, 2014. Though the compliance was reported, no verification in that behalf was undertaken.

27. The MCI and the Central Government have been vested with monitoring powers under Section 10A and the Regulations. It is expected of these authorities to discharge their functions well within the statutory confines as well as in conformity with the Schedule to the Regulations. If there is inaction on their part or non-observance of the time Schedule, it is bound to have adverse effect on all concerned. The affidavit filed on behalf of the Union of India shows that though the number of seats had risen, obviously because of permissions granted for establishment of new colleges, because of disapproval of renewal cases the resultant effect was net loss in terms of number of seats available for the academic year. It thus not only caused loss of opportunity to the students' community but at the same time caused loss to the society in terms of less number of doctors being available. The MCI and the Central Government must therefore show due diligence right from the day when the applications are received. The Schedule giving various stages and time limits must accommodate every possible eventuality and at the same time must comply with the requirements of observance of natural justice at various levels. In our view the Schedule must ideally take care of :

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

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

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

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

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

28. As against the Schedule brought in by Notification dated 21.09.2012, the draft Schedules submitted by Mr. Vikas Singh, learned Senior Advocate appearing for the MCI do make provisions for stage wise consideration and set time limits therefor. They also provide for hearing by the Central Government under Section 10A(4) and compliance verification assessment by the MCI. We accept the submission of Mr. Vikas Singh that the draft Schedules suggested and placed by the MCI will now take care of all foreseeable situations and ensure availability of opportunity at all possible stages. In our view the draft Schedule so submitted by the MCI be given proper statutory status.

29. The cases in hand show that the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in *Priya Gupta* it did exercise that power in favour of Government Medical Colleges. The decision of this Court in *Priya Gupta* undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in *Priyadarshini*. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons

to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Priyadarshini where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in Priya Gupta must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the dead line namely 30th of September for making admissions to the first MBBS course as laid down by this Court in Madhu Singh and Mridul Dhar must always be observed.

30. Since the deadline for making admissions was over and there was no formal permission to establish new Medical Colleges or to increase the intake capacity in respect of existing Colleges, applicants in Categories I and II were not considered fit for grant of any interim relief. For the same reasons no relief can be granted to them. Consequently, the writ petitions and appeals arising from the special leave petitions in Categories I and II except one arising out of SLP(C) No.23512 of 2014 are dismissed. Said appeal from SLP(C) No.23512 of 2014 at the instance of the MCI is allowed and the order passed by the High Court is set aside. No orders are required in Transfer Petition No. 1217 of 2014 and it stands dismissed. The relief granted in respect of those falling in Category III, vide orders dated 18.09.2014 and 25.09.2014 is made absolute in terms of those orders and the writ petitions and appeals arising from special leave petitions in Category III stand disposed of in such terms.

31. The MCI and the Central Government are directed to discharge their functions in accord with the concerned Regulations and the Statute and in keeping with the observations made hereinabove.

32. All matters stand disposed of in above terms. No order as to costs.

¹(2005) 2 SCC 0065

²(2011) 4 SCC 0623

³(2012) 7 SCC 0433

⁴(2002) 7 SCC 0258

⁶(2014) 13 SCC 0506