

SUPREME COURT OF INDIA

Indian Centre for Advancement of Research and Education Haldia (ICARE)

Vs.

Union of India

WP(Civil)No.633 of 2017

(Dipak Misra,CJI., Amitava Roy and A.M.Khanwilkar,JJ.,)

21.09.2017

JUDGMENT

Dipak Misra,CJI.,

1. In this Writ Petition preferred under Article 32 of the Constitution of India, the petitioner No. 1-Indian Centre for Advancement of Research and Education, Haldia (ICARE), a society registered under the Societies Registration Act, 1961 through its Secretary, and the petitioner No. 2-ICARE Institute of Medical Sciences and Research and Dr. Bidhan Chandra Roy Hospital, Haldia situated in West Bengal through its Principal have prayed for issue of a writ of certiorari for quashment of the order dated 31.05.2017 passed by the competent authority of the Government of India, Ministry of Health and Family Welfare and further to issue writ of mandamus or directing the respondents to grant recognition under Section 11(2) of the Indian Medical Council Act, 1956 (for brevity, 'the Act') approval to the petitioner No. 2 College and recognition to the MBBS degree to be awarded by the West Bengal University of Health Sciences, Kolkata in respect of the students who have completed their courses at petitioner No. 2 College.

2. The facts which are essential for the purpose of adjudication of the controversy are that the petitioner No. 2 College was established in 2011 and it has been imparting education in MBBS courses since the academic year 2011-2012 and has been granted renewal permission for all subsequent years up to 2016-2017. For the purpose of grant of renewal of permission under Section 10-A of the Act, a surprise assessment was carried out by the assessors on 05.11.2015 and 06.11.2015. The assessment report dated 06.11.2015 showed certain deficiencies and thereafter the same being not removed by the institution, the Executive Committee of the Medical Council of India (MCI) recommended to the Central Government not to renew permission for the admission of 6th batch (100 seats) of the MBBS for the academic year 2016-2017. The petitioners came to know about the recommendation and the deficiencies and through communication dated 02.01.2016 informed the respondent No. 1 that the deficiencies pointed out in the assessment report dated 06.11.2015 had been duly rectified and accordingly submitted for compliance report. A request was made for issuance

of Letter of Permission for admission of 6th batch of MBBS course for the academic year 2016-2017 on the basis of the compliance report.

3. After receipt of the compliance report from the petitioner No. 2, the second respondent carried out a surprise inspection for clarification of the compliance on 19.02.2016. On the date of inspection, the assessors found certain deficiencies and eventually on 14.05.2016 recommended to the respondent No. 1 not to renew the permission for admission of the 6th batch (100 seats) in MBBS course for the academic year 2016-2017.

4. The decision of the Executive Committee of the MCI taken on meeting held on 13.05.2016 is note worthy. It is as follows:

“The Executive Committee of the Council considered the compliance verification assessment, report (19th February 2016) alongwith previous assessment report (5th & 6th November, 2015) as well as letter dated 19/02/2016 and 14.03.2016 received from the Principal of the college and noted the following:-

1. Deficiency of faculty is 67% as detailed in the report
2. Shortage of Residents is 85% as detailed in the report
3. Bed occupancy was only 08% on day of assessment which is grossly inadequate. Many wards were closed.
4. OPD attendance was only 250 on day of assessment which is grossly inadequate.
5. Casualty attendance was only 09 on day of assessment. No Casualty Medical Officer was present on day of assessment
6. There was NIL Major & NIL Minor operation on day of assessment
7. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment
8. Radiological & Laboratory investigation workload is inadequate. Separate register for Laboratory investigation is not available.
9. Histopathology & Cytopathology workload is NIL on day of assessment.
10. ICUs: ICCU beds are not available. MICU & ICCU are common.
11. Otho. Deficiencies as pointed out in the assessment report. In view of the above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 6 in batch of 100 MBBS students at ICARE Institute of Medical Sciences & Research, Haldia, West Bengal under West

Bengal University of Health Sciences, Kolkata u/s 10A of the IMC Act, 1956 for the academic year 2016-2017.”

5. After receipt of the recommendation of the Executive Committee of the MCI, the first respondent vide communication dated 10.06.2016 directed the petitioner institution not to admit any students in 6th batch (100 seats) in MBBS course for the academic year 2016-2017. It is necessary to state here that by that time the Oversight Committee had come into existence by virtue of the Constitution Bench judgment in *Modern Dental College and Research Center and others v. State of Madhya Pradesh and others*¹. The Oversight Committee informed the MCI that it had decided in its meeting held on 13.06.2016 to permit all colleges which had not been afforded an opportunity of hearing to present their compliance deficiencies communicated by MCI in the inspection/verification reports for 2016-2017 be given an opportunity to furnish their compliance reports to respondent No. 1. The petitioner College submitted its fresh application for renewal permission for 6th batch (100 seat) for the academic year 2016-2017 on 20.06.2016 along with the compliance report. The petitioners also submitted a letter dated 30.07.2016 to the Oversight Committee clarifying the factual position in respect of alleged deficiencies pointed out by the assessors and thereafter, the first respondent vide communication dated 20.08.2016 on the basis of the report of the Oversight Committee granted permission for the 6th batch (100 seats) in MBBS course for the academic year 2016-2017 under Section 10-A of the Act and further stipulated that the next batch of students in various courses be admitted in the College only after the permission of the Central Government for renewal and fulfilling of the stipulated conditions. Be it stated, the conditions that were imposed by the Oversight Committee were incorporated in the letter of respondent No. 1. The conditions imposed by the Oversight Committee read:

“(i) An affidavit from the Dean/Principal and Chairman of the Trust / Society/ University/ Company etc concerned, affirming fulfillment of all deficiencies and statements made in the respective compliance report submitted to MHFW by 22 June 2016.

(ii) A bank guarantee in the amount of Rs. 2 crore in favour of MCI, which will be valid for 1 year or until the first renewal assessment, whichever is later. Such bank guarantee will be in addition to the prescribed fee submitted along with the application.

2. The OC has also stipulated as follows:-

(i) OC may direct inspection to verify the compliance submitted by the College and considered by OC, anytime after 30 September 2016.

(ii) In default of the conditions (i) and (ii) in para 1 above and if the compliances are found incomplete in the inspection to be conducted after 30 September 2016, such college will be debarred from fresh intake of students for 2 years commencing 2017-18.”

6. It is the stand of the petitioner No. 2 that it had complied with the conditions imposed by the Oversight Committee and also furnished the back guarantee in favour of the second respondent. In the meantime, students admitted in the first batch had completed the course and were ready to appear for their final professional MBBS University examination in February, 2017 and in this factual background, it applied for grant of approval and recognition under Section 11(2) of the Act.

7. It is contended by the petitioner No. 2 that after receiving the application of the college/institute, the MCI is required to carry out assessment for compliance verification in the light of assessment report dated 19.02.2016 and to evaluate the standard of MBBS University Examination and to assess the infrastructural facilities available therein and thereafter confer approval and recognition to MBBS degree with permission to admit students during the academic session 2017-2018. It is averred that MCI inspected the institution on 03.02.2017, 17.03.2017 and 18.03.2017 for the purposes mentioned above. After evaluation of standard of examination on 03.02.2017, the assessors submitted a report in Form 'C' and recommended for grant of approval of the institute. On 17.03.2017 and 18.03.2017 in the compliance verification report, the assessors did not notice any major deficiency whatsoever but the MCI after perusal of the said assessment report decided to recommend to the Central Government to debar the petitioner institute from taking admission of students in MBBS course for the next two sessions, that is, 2017-2018 and 2018-2019. The Executive Committee of the MCI took note of the assessors report which has noted the following:

“1. There were only 08 Major Operations for the whole hospital on day of assessment.

2. ICUs: There were only 2 patients each in SICU, NICU, PICU on day of assessment.

3. Radio diagnosis department: 4 Static X-ray machines are available against requirement of 5. 2 USG machines are available against requirement of

3. Students Hostels: Available accommodation is less than required as detailed in the report Study room does not have Computer with Internet & is not air-conditioned.

4. Interns' Hostel: Available accommodation is less than required. Hostels are not furnished. Toilet facilities are inadequate. Visitors' room, AC. Study room with Computer & Internet and Recreation room are not available.

5. Nurses' Hostel: Available accommodation is for 44 against requirement of 48.

6. MEU: Infrastructure facility in MEU is not adequate. There is no computer internet facility.

7. Other deficiencies as pointed out in the assessment report.”

8. Thereafter the Executive Committee opined thus:

–In view of the above, the college has failed to abide by the undertaking it had given to the Central Govt. that there are no deficiencies as per clause 3.2(i) of the directions passed by the Supreme Court mandated Oversight Committee vide communication dated 12/08/2016. The Executive Committee, after due deliberation and discussion, has decided that the college has failed to comply with the stipulation laid down by the Oversight Committee. Accordingly, the Executive Committee recommends that as per the directions passed by Oversight Committee in para 3.2(b) vide communication dated 12/08/2016 the college should be debarred from admitting students in the above course for a period of two academic years i.e. 2017-18 and 2018-19 as even after giving an undertaking that they have fulfilled the entire infrastructure for recognition/approval of ICARE Institute of Medical Sciences and Research, Haldia, West Bengal for the award of MBBS degree (100 seats) granted by The West Bengal University of Health Sciences, Kolkata u/s 11(2) of the IMC Act, 1956 and Compliance Verification Assessment for renewal of permission for admission of 6th batch (100 MBBS seats) u/s 10(A) of the IMC Act, 1956 for the Academic year 2016-17 with reference to the conditional approval accorded by Oversight Committee, the college was found to be grossly deficient. It has also been decided by the Executive Committee that the Bank Guarantee furnished by the college in pursuance of the directives passed by the Oversight Committee as well as GOI letter dated 20/08/2016 is liable to be encashed.”

A copy of the recommendation was sent to the Principal of the petitioner institute.

9. After receiving the communication from the MCI, petitioner No. 2 vide letter dated 04.04.2017 submitted a detailed representation to the Oversight Committee highlighting the unjustified decision of the Executive Committee of MCI with regard to compliance verification. A communication was also sent to respondent No. 1. In the meantime, the petitioner received a communication dated 07.04.2017 issued by the first respondent granting an opportunity of personal hearing on 13.04.2017. The petitioners appeared before the respondent No. 1 on the date fixed and furnished the requisite information and reiterated the stand that the petitioner No. 2 institute is fully compliant with the MCI rules and regulations and clarified the position relating to deficiencies which were noted as per the assessment report on 03.02.2017. It also highlighted that the assessment reports of 17.03.2017 and 18.03.2017 did not justify denial of grant of permission and in any case, the institution had taken measures to remove the said deficiencies. It was asserted that the compliance report dated 12.04.2017 of the institute clearly established that all the deficiencies have been removed by 12.04.2017.

10. According to the petitioners, on 24.04.2017 officers of respondent No. 2 without prior intimation conducted an assessment flouting all norms. The report dated 24.04.2017 which is

named as Compliance Verification Assessment of the petitioner-College by the MCI noted certain major deficiencies which are as follows:

- “1. Deficiency of faculty is 61.32% as detailed in the report.
 2. Shortage of Residents is 36.06% as detailed in the report.
 3. Bed Occupancy is 45.95% at 10 a.m. on the day of assessment.
 4. Most of the wards are not as per MSR.
 5. In Obst. & Gynae wards, pediatric wards and orthopedic wards patients have minor complaints did not required admission, in obstetrics wards elderly lay admitted in the wards (college authority not provide a case sheet about this). Hospital internal condition is non-hygienic.
 6. There were only 05 Major Operations on day of assessment.
 7. Data of Laboratory & Radiological investigations provided by the Institute are inflated.
 8. IPD attendance data provided by Institute are inflated.”
11. The Executive Committee in its meeting held on 30.04.2017 considered the compliance verification report dated 24.04.2017 along with previous assessment report (17th & 18th March, 2017) and noted:
- “In view of the above, the Executive Committee of the Council decided to recommended to the Central Government not to recognize/approve ICARE Institute of Medical Sciences & Research, Haldia, West Bengal for the award of MBBS degree (100 seats) granted by The West Bengal University of Health Sciences, Kolkata u/s 11(2) of the IMC Act, 1956 and further decided that the Institute be asked to submit the compliance for rectification of the above deficiencies within 01 month for further consideration of the matter. However in view of above, the Executive Committee to reiterate its earlier decision to recommend to the Central Govt, that the college should be debarred from admitting students in the above course for a period of two academic years i.e. 2017- 18 & 2018-19 as per directions passed by Oversight Committee in Para 3.2(b) vide communication dated 12.08.2016.”
12. Inspection carried out by the MCI on 24.04.2017 was brought to the notice of the Oversight Committee highlighting that the assessment carried out on the said date was factually incorrect and not in good faith. Criticism was advanced about the inspection of 24.04.2017 on the foundation that despite assessments carried out on 03.02.2017, 17.03.2017 and

18.03.2017, a surprise and perfunctory verification was carried out. As the factual narration would uncurtain, the respondent No. 1 vide letter dated 31.05.2017 intimated the petitioner No. 2 College that the Central Government decided not to permit admission of students in the MBBS course (100 course) for the academic year 2017-2018 with the further stipulation that the admission made against the decision of the Central Government will be treated as irregular and action will be initiated under the Act and Regulations made thereunder. Examples have been cited in the Writ Petition, how the other institutions who had suffered from significant deficiencies have been granted the Letter of Permission and action of the respondents have been characterized as mala fide.

13. It is necessary to state here that after the matter was sent for reconsideration, the Central Government granted hearing to the college on 22.08.2017 and took the assistance of the newly constituted Oversight Committee as per the order of the Constitution Bench. The Hearing Committee after considering the report and submissions of the College submitted its report by stating that there was no merit for reconsideration of the case for renewal and it concurred with the decision taken by the Ministry on earlier occasion. The decision of the Hearing Committee has been enclosed with the order dated 29.08.2017. The report of the Hearing Committee also mentioned the tabular. We think it appropriate to reproduce the same:

Deficiencies 2016-17	Deficiencies in compliance verification assessment on 3rd Feb. 2017 & 17th-18th March, 2017 after OC approval	Deficiencies in compliance verification for Recognition on 24.4.2017	Comments of DGHS Hearing Committee	Hearing Committee findings (22.8.2017)
1- Deficiency of faculty is 67% as detailed in the report 2. Shortage of Residents is 8S% as detailed in the report 3. Bed occupancy was only 08% on day of assessment which is	1. There were only 08 Major Operations for the whole hospital on day of assessment. 2. ICUs: There were only 2 patients each in S1CU, NICU, P1CU on day of assessment 3. Radiodiagnosis	1. Deficiency of faculty is 61.32% as detailed in the report. 2. Shortage of Residents is 36.06% as detailed in the report. 3. Bed Occupancy is 45.95% at 10 a.m. on day of assessment	1. Complied with 2. Need to the reverified 3. Agreed to the deficiency in the assessment report. No satisfactory reply. Deficiency persists.	1,2,3. The college authorities submitted the explanation as per the deficiency pointed out by MCI for points 1, 2 & 3. College authorities failed to produce any

<p>grossly inadequate. Many wards were closed. 4. OPD attendance was only 250 on day of assessment which is grossly inadequate. 5. Casualty attendance was only 09 on day of assessment. No Casualty Medical Officer was present on day of assessment 6. There was NIL Major & NIL Minor operation on day of assessment 7. There was NIL Normal Delivery & NIL Caesarean Section on day of assessment 8. Radiological & Laboratory investigation workload is inadequate. Separate register for Laboratory investigation</p>	<p>department: 4 Static X-ray machines are available against requirement of 5. 2 USG machines are available against requirement of 3. 4: Students' Hostels: Available accommodation is less than required as detailed in the report. Study room does not have Computer with Internet & is not airconditioned. 5. Interns' Hostel: Available accommodation is less than required. Hostels are not furnished. Toilet facilities are inadequate. Visitors' room, A.C. Study room with Computer & Internet and Recreation room are not available. 6. Nurses'</p>	<p>4. Most of the wards are not as per MSR. 5. In Obst & Gynae wards, pediatric wards and orthopedic wards patients have minor complaints did not required admission, in obstetrics wards elderly lady admitted in the wards (college authority not provide a case sheet about this). Hospital internal condition is nonhygienic. 6. There were only. 05 Major Operations on day of assessment. 7. Data of Laboratory & Radiological investigations provided by Institute</p>		<p>concrete document any proof of their contention 4. The college authorities could not provide any satisfactory evidence. 5 The Hearing Committee cannot give comments regarding the genuineness 5. Also the college authorities failed to provide any further proof regarding the same. 6. College authorities could not provide any evidence for more than 5 major operations on the date of assessment. 7& 8. The Data Laboratory & Radiological</p>
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is not available. 9. Histopathology & Cytopathology workload is NIL on day of assessment. 10. ICUs: ICCU beds are not available. MICU & ICCU are common	Hostel: Available accommodation is for 44 against requirement of 48. 7. MEU: Infrastructure facility in MEU is not adequate. There is no computer internet facility.	are inflated. 8. OPD attendance data provided by Institute are inflated. 9. Other deficiencies as pointed out in the assessment report.		investigations provided by the Institute in front of hearing committee was not satisfactory.

14. Assailing the decisions of the MCI and the Central Government, it is submitted by Dr. Rajeev Dhawan, learned senior counsel appearing for the petitioner No.1 and Mr. R.S. Suri, learned senior counsel for the petitioner No. 2 submit that the institution was found fully compliant as per the inspection made on 03.02.2017 and surprise inspections carried out on 17.03.2017 and 18.03.2017 and the said inspections have to be understood in law as assessment for grant of recognition under Section 11(2) of the Act and compliance verification assessment for renewal of permission for admission of 6th batch (100 seats) of MBBS course under Section 10-A of the Act and hence, further inspection on 24.04.2017 has no legal acceptance. That apart, submits Dr. Dhawan, the initial communication of the MCI though made within 11 days of the inspection, it, despite its obligation to obtain the approval of the Oversight Committee, had debarred the institution from admitting students and encashing the bank guarantee which exhibits absolute arbitrariness and makes the decision wholly vulnerable. It is contended that the recommendation made was contrary to the fact situation and, therefore, to justify its stand, the assessors of the MCI being so directed carried out routine assessment which is neither supportable in law nor does it stand to reason. Learned senior counsel is extremely critical of such kind of inspection because it does not follow any procedure and reveals the pre-determined mind of the assessors and, in any case, the object of the MCI, as is evident, was to prove its point and not to objectively perceive things so that the medical education in this country can achieve real stability. He has referred to the compliance report of 12.04.2017 as it would be indicative of the fact that the deficiencies have been rectified. It is put forth by Dr. Dhawan that the Central Government despite the order passed by this Court in *IQ City Foundation & Anr. v. Union of India and Ors.*² has not really kept itself alive to the principles stated by this Court and acted not only unreasonably but in a high-handed manner. Learned senior counsel would submit that the order dated 29.08.2017 deserves to be axed because it is cryptic and unreasonable as it has not taken into account the materials submitted before

the Hearing Committee in the form of attendance record, salary statements, Forms 16A (TDS), clinical records and certain other documents which speak eloquently about the compliance of initial deficiencies pointed out by the assessors. It is urged by him that the whole action of the MCI is mala fide and is incapable of withstanding scrutiny.

15. Refuting the submissions of Dr. Dhawan, it is contended by Mr. Vikas Singh, learned senior counsel along with Mr. Gaurav Sharma, learned counsel appearing for the MCI contended that the aspersions made by the petitioners on the inspection held on 24.04.2017 do not deserve consideration since it is the duty of the MCI to see that the institutions remain ever compliant. Attribution of mala fide is absolutely unwarranted, for the assessors of MCI had gone on surprise verification as the College submitted the compliance report which stated that the deficiencies had been removed. Learned senior counsel would submit that the experts enjoy great reputation in their field and the bald allegations should not be allowed to destroy the basic purpose for which the inspection is meant for and it is the statutory responsibility of the MCI to scrutinize at the spot about the due compliance report. Placing reliance on certain authorities which we shall refer to in due course, contends Mr. Singh, that a minute inspection of the contents of the report is not permissible in law unless prima facie it is reflective of total unacceptability or perversity. The learned counsel has drawn the distinction between Letter of Permission at the commencement of the college and at a renewal stage and further at the final recognition stage. He has pressed into service the language employed in the provisions of the Act and the Establishment of Medical College Regulations, 1999 (for short, “the Regulations”) framed under the said Act to strengthen the stand that an institution having deficiencies which are unacceptable cannot be extended the benefit of recognition. It is his further contention that an institution which is granted LOP for the initial establishment, certain deficiencies to some extent be ignored but as it moves from initial stage to another the yardsticks that apply are more rigorous.

16. Mr. Maninder Singh, learned Additional Solicitor General defending the order passed by the Central Government canvassed that the order in present incarnation cannot be characterized as an unreasoned one because it has chronologically referred to the background and taken note of the Oversight Committee which consists of eminent doctors as per the decision of this Court passed by the Constitution Bench in Writ Petition (Civil) No. 408 of 2017 titled Amma Chandravati Educational and Charitable Trust and others v. Union of India and another. It is argued by him that when the eminent doctors have evaluated all the verification inspection reports and arrived at the conclusion and the Central Government concurred with it by taking note of every facet to call it an unreasoned order is not only unfair but, in a way uncharitable. According to Mr. Singh, the recommendations made by the MCI being well considered and based on materials have been accepted by the respondent No. 1 and in such circumstances the order passed by it should be treated as impeccable, warranting no interference.

17. We have already narrated the facts in a chronological manner. What grieves the petitioners is the inspection caused on 24.04.2017. The gravamen of the proponent is that the said inspection in the name of verification is an outcome of mala fides and hence, legally

illegitimate. The stance taken to pyramid the point is that it is not permissible under the Act or the Regulations, and the assessors nominated by the MCI have carried out inspection not only in total violation of principles of natural justice but also totally abandoning their sense of objectivity. As the chronicle of the factual score would depict, the institution had filed a “compliance report” on 12.04.2017. The said compliance report referred to communication of MCI dated 28.03.2017 in respect of grant of renewal/approval to the petitioner College. The said report after mentioning about the minor deficiencies pointed out by the assessors stated:

“So far as the deficiencies pointed out by the assessors after their assessment of infrastructures on 17/18 March, 2017 vide their report in Format A-II is concerned, they are not in major natures which may justify denial of grant of recognition. They are not in respect of staff, space, equipment, college/hospital and clinical material. It is not practical to insist for a full proof or absolute adherence to all requirements without regard to their importance for the purpose of imparting education, in a practical way. However, since we have already removed the deficiencies a compliance report in tabular form is being submitted herewith. It is important to mention here that the Assessors have not found any deficiency in teaching staff. They have pointed out in their report shortage of 3.8% teaching faculty and 1.5% of resident doctors which are permissible as per MCI rules. Under the facts and circumstances mentioned above, you are requested to kindly accept the compliance report and if deemed necessary grant personal hearing to us in the matter for the ends of natural justice.”

Be it noted, the compliance report contained annexures and the soft copy in word format and in CD. At this juncture, as the MCI would contend, it felt the necessity to conduct a surprise inspection to satisfy itself as regards the compliance on 24.04.2017. We already have reproduced the same.

18. To appreciate the controversy in apposite perspective, it is extremely crucial to understand the scheme of the Act and how the same has been understood and appreciated by this Court. Section 3 of the MCI Act deals with constitution and composition of the MCI. Section 10 provides the constitution of the Executive Committee and further stipulates that in addition to the powers and duties conferred and imposed upon it by the Act, the Committee shall exercise and discharge such powers and duties as the Council may confer or impose upon it by Regulations which may be made in that behalf. Section 10-A(1) provides for permission for establishment of new medical college and new course of study. It stipulates that notwithstanding anything contained in the Act or any other law for the time being in force, no person shall establish a medical college or no medical college shall open a new or higher course of study or training including post-graduate course of study or training or increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the said section. Section 10-A(2) lays the postulate that every person or medical college shall for the purpose of obtaining permission under sub-section (1), submit to the Central Government a

scheme in accordance with the provisions of clause (b) of Section 3 and the Central Government shall refer the scheme to the MCI for its recommendations.

19. Sub-section (3) and sub-section (7) of Section 10-A deal with the role of the MCI on receipt of a scheme. Sub-section (3), (4) and sub-section (7) of Section 10-A read as follows :

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

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

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

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

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

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

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

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

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

(g) any other factors as may be prescribed.”

20. Sub-section (4) of Section 8 deals with the power of the Central Government. It reads:

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

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard; Provided further that nothing in this sub section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).”

21. Section 10-A has been interpreted in *Royal Medical Trust (Registered) and Anr v. Union of India & Anr*³. The said decision also reflects on the Regulations framed by the MCI. The Court has ruled that the MCI and the Central Government, having vested with the monitoring powers under Section 10-A of the Act, they are required to show due diligence right from the day when the applications are received and the schedule giving various stages and the time limit must accommodate every possible eventuality and at the same time must comply with the requirement of observance of principles of natural justice at various levels. The Court, in this regard, has expressed thus:

–31. 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. 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 fulfil these requirements, the application on the face of it, would be incomplete and be rejected. Those who fulfil the basic requirements would be considered at the next stage.

(B) Inspection should then be conducted by the Inspectors of 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 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 medical college concerned should be given requisite permission/renewal. However, if there are any deficiencies or shortcomings, 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, 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 MCI and the Central Government. In cases where actual physical verification is required, 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.”

The aforesaid authority makes it clear as day that the surprise inspection is conceived of within the scheme of the Act and the institution/college is required to remain compliant.

22. In *Manohar Lal Sharma v. Medical Council of India & Ors.*⁴, it has been ruled that the MCI on the basis of the reports regular compliance is legally obliged to form an opinion with regard to the capacity of the College to provide necessary facilities in respect of staff, equipments, accommodation, training and other facilities to ensure proper functioning of the

medical college or for increase of admission capacity. In the said case, the Court while dealing with the surprise inspection, has expressed thus:

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

Eventually, the Court held:

–27. We are also of the view that such an order is not vitiated by violation of principles of natural justice, especially, when no allegation of bias or mala fide has been attributed against the two doctors who constituted the inspection team, which conducted the surprise inspection on 6-7-2013. When the inspection team consists of two doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such inspection. In such circumstances, we are of the view that MCI has rightly passed the order rejecting the approval for renewal of permission for the third batch of 150 MBBS students granted for the academic year 2013-2014.”

[Emphasis added]

23. In this context, Mr. Vikas Singh, learned senior counsel for the MCI, has drawn our attention to Regulation 7 which deals with the report of the MCI. He has also drawn our attention to Regulation 8 that pertains to grant of permission by the Central Government. Regulation 8, has been amended on 8.2.2016 and 8.3.2016. We think it appropriate to extract the relevant clauses:

“(1) The Central Government, on the recommendation of the Council for Letter of Permission, may issue a letter to set up a new medical college with such 18 conditions or modifications in the original proposal as may be considered necessary. This letter can 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 guarantee 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.”

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

[Underlining is by us]

25. Vide Gazette Notification dated 18.3.2016, clause 8(3)((1)(a) was substituted thus :

-(a) Colleges in the stage of Letter of Permission upto II renewal (i.e. Admission of third batch) If it is observed during any inspection/assessment of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is < 50% (45% in North East, Hilly terrain, etc.), compliance of rectification of deficiencies from such an institute will not be considered for issue of Letter of Permission (LOP)/renewal of permission in that Academic Year.”

26. Clause 8(3)(1)(b) was also substituted which reads thus

-(b) Colleges in the stage of III & IV renewal (i.e. Admission of fourth & fifth batch) If it is observed during any inspection of the Institute that the deficiency of teaching faculty and / or Residents is more than 20% and / or bed occupancy is <65% compliance of rectification of deficiencies from such an institute will not be considered for renewal of permission in that Academic Year.”

27. Clause 8(3)(1)(c), after the amendment, reads as follows:

-(c) Colleges which are already recognized for award of M.B.B.S. degree and / or running Postgraduate courses. If it is observed during any inspection / assessment of the institute that the deficiency of teaching faculty and / or Residents is more than 10% and / or bed occupancy is < 70% compliance of rectification of deficiency from such an institute will not be considered for issue of renewal of permission in that Academic Year and further such an institute will not be considered for processing applications for Postgraduate courses in that Academic Year and will be issued show cause notices as to why the recommendations for withdrawal of recognition of the courses run by that institute should not be made for undergraduate and postgraduate

courses which are recognized u/s 11(2) of the IMC Act, 1956 along with direction of stoppage of admissions in permitted postgraduate courses.”

–However, the office of the Council shall ensure that such inspections are not carried out at least 2 days before and 2 days after important religious and festival holidays declared by the Central/State Govt.”

28. Clause (4) is as follows:

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

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.”

29. Regulation 8(3)(1) has been added by Gazette Notification dated 08.02.2016 which stipulates that permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on an yearly basis subject to verification of the achievement of targets. It also provides that the process of renewal of permission to continue till such time the establishment of the medical college and expansion of the hospital facilities are completed, and thereafter a formal recognition of the medical college is granted. It clearly lays down that further admission shall not be made at any stage unless the requirements of the Council are fulfilled and the Central Government may at any stage convey the deficiencies to the college and provide an opportunity and time to rectify the deficiencies.

30. Sub-section (3)(1) contains certain provisos. They read as follows :

–PROVIDED that in respect of (a) Colleges in the stage upto II renewal (i.e. Admission of third batch): If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 30% and/or bed occupancy is 60 %, such an institute will not be considered for renewal of permission in that Academic Year.

(b) Colleges in the stage from III renewal (i.e. Admission of fourth batch) till recognition of the institute for award of M.B;B.S. degree: If it is observed during any regular inspection of the institute that the deficiency of teaching faculty and/or Residents is more than 20% and/or bed occupancy is < 70 %, such an institute will not be considered for renewal of permission in that Academic Year. 19

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

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

(d) Colleges which are found to have employed teachers with faked/forged documents: If it is observed that any institute is found to have employed a teacher with faked/forged documents and have submitted the Declaration Form of such a teacher, such an institute will not be considered for renewal of permission/recognition for award of M.B.B.S. degree/processing the applications for postgraduate courses for two Academic Years - i.e. that Academic Year and the next Academic Year also. However, the office of the Council shall ensure that such inspections are not carried out at least 3 days before upto 3 days after important religious and festival holidays declared by the Central/State Govt.

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

(3) The procedure for 'Renewal' of recognition shall be same as applicable for the award of recognition. (4) Failure to seek timely renewal of recognition as required in subclause (a) supra shall invariably result in stoppage of admissions to the concerned Undergraduate Course of MBBS at the said institute."

As is evincible, the aforesaid Regulations deal with various stages and the requirements under Section 10-A and Section 11 (2) of the Act.

31. The aforesaid Regulations, as we perceive, deal with the compliance verification. In the instant case, after the College submitted that it had complied with deficiencies pointed out by the team of assessors, the MCI thought it necessary to have an inspection. It is not in dispute that the said inspection was a surprise inspection and further it was, as the MCI perceived, required to be done to verify whether the institution was really compliant or not. In the verification report dated 24.04.2017, as the assessors have pointed out, there are number of deficiencies.

32. The stand of the petitioners is that such verification is impermissible and grossly mala fide. In IQ City Foundation (supra), the three-Judge Bench, after referring to the authority in

Royal Medical Trust (supra) has held that the emphasis on the compliant institutions that can really educate doctors by imparting quality education so that they will have inherent as well as the cultivated attributes of excellence. There can be no scintilla of doubt that an institution that imparts medical education has to remain ever compliant. It is necessary to mention here that in IQ City Foundation (supra), a contention was advanced that when the Central Government sends back the matter to the MCI for compliance verification, the power of the MCI is restricted and it is only required to inspect the aspects for which the matter has been referred back by the Central Government. Negativizing the said contention, the Court has held:

“On a reading of Section 10-A of the Act, Rules and the Regulations, as has been referred to in Manohar Lal Sharma (supra), and the view expressed in Royal Medical Trust (supra), it would be inapposite to restrict the power of the MCI by laying down as an absolute principle that once the Central Government sends back the matter to MCI for compliance verification and the Assessors visit the College they shall only verify the mentioned items and turn a Nelson’s eye even if they perceive certain other deficiencies. It would be playing possum. The direction of the Central Government for compliance verification report should not be construed as a limited remand as is understood within the framework of Code of Civil Procedure or any other law. The distinction between the principles of open remand and limited remand, we are disposed to think, is not attracted.”

33. The aforesaid passage lays stress how the educational institutions are to be compliant to have the requirements as per the Act and the Regulations and not to take shelter under a subterfuge or lean upon a contrived situation to exhibit justification. Thus analysed, the grievance agitated pertaining to surprise inspection with keen acumen does not commend acceptance. The attack on the compliance report on asseverations of mala fide, if we allow ourselves to say so, does not deserve acceptance. Whether there is mala fide or not, depends upon the facts and circumstances of the case as has been held in *State of Bihar v. P.P. Sharma, IAS & Anr.*⁵ Mere allegation of mala fide does not vitiate an enquiry or proceeding. As we see, in the instant case, the allegations have been made against the assessors who are experts in the field and we find no reason to attribute any kind of malice or mala fide to them. In the absence of any kind of material brought on record, the mere allegations that there was a surprise inspection, within a fortnight, would not make the inspection a tainted one. In this regard, we may usefully refer to a passage from *Medical Council of India v. Kalinga Institute of Medical Sciences*⁶:

“Our attention was also drawn to the decision of this Court in Manohar Lal Sharma v. Medical Council of India wherein it was held (SCC p. 72, para 27) that since the inspection is taken by –doctors of unquestionable integrity and reputation, who are experts in the field, there is no reason to discard the report of such an inspection” . In the present appeal, there is no allegation made by KIMS of any mala fides of the inspection team or any perversity in the inspection report and hence, there is no

question of challenging the conclusions of a neutral, randomly selected inspection team in its assessment.”

And again:

–The High Court did not appreciate that the inspection was carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities in KIMS. The High Court under Article 226 of the Constitution was certainly not tasked to minutely examine the contents of the inspection report and weigh them against the objections of KIMS in respect of each of its 18 items. In our opinion, the High Court plainly exceeded its jurisdiction in this regard in venturing into seriously disputed factual issues. ”

[Emphasis supplied]

34. In *Royal Medical Trust and another v. Union of India and another*⁷ this Court held:

–Keeping in view the facts and circumstances of the case, we sum up our conclusions and directions, thus:-

(a) The petitioners are not entitled to Letter Of Permission (LOP) for the academic session 2017-2018. We direct that the order passed in the present writ petition shall be applicable hereafter for the academic session 2018-2019 since the cut off date for admissions to MBBS course for academic session 2017-2018 is over and the academic session has commenced. No petition shall be entertained from any institution/college/society/trust or any party for grant of LOP for 2017-2018. We say so as the controversy for grant of LOP for the academic year 2017-2018 should come to an end and cannot become an event that defeats time. The students who are continuing their studies on the basis of LOP granted for the academic year 2016-2017 should be allowed to continue their studies in the college and they shall be permitted to continue till completion of the course.

(b) The applications submitted for 2017-2018 shall be treated as the application for 2018-2019 and the petitioners shall keep the bank guarantee deposited with the Medical Council of India alive and the MCI shall not encash the same.

(c) The Medical Council of India shall conduct a fresh inspection as per the Regulations within a period of two months. It shall apprise the petitioner-institution with regard to the deficiencies and afford an opportunity to comply with the same and, thereafter, proceed to act as contemplated under the Act.

(d) The inspection shall be carried out for the purpose of grant of LOP for the academic session 2018-2019.

(e) After the Medical Council of India sends its recommendation to the Central Government, it shall take the final decision as per law after affording an opportunity of hearing to the petitioners. Needless to say, it shall take the assistance of the Hearing Committee as constituted by the Constitution Bench decision in *Amma Chandravati Educational and Charitable Trust* (supra) or other directions given in the said decision.”

The aforesaid directions were issued keeping in view the deficiencies in the college therein and the interest of the students.

35. In *Madha Medical College & Research Institute v. Union of India*⁸ the Court held:

“At the same time, we are of the view that having regard to the facts which have transpired, the petitioner should be permitted to establish before MCI that it possesses the requisite infrastructure and has taken all necessary steps to remove the deficiencies which have been noted to exist. Such an exercise cannot be carried out in time for academic year 2017-18 since the last date for admissions has elapsed and the academic session commenced. Hence the petitioner cannot be permitted to participate in the counseling process for the ensuing academic year. Any such exercise would necessarily have to be for the academic year 2018-19.”

36. In *Major S.D. Singh Medical College and Hospital & Another v. Union of India & another*⁹ it has been said:

“Having regard to the interest of medical education and the observations contained in the judgment delivered today by this Court in W.P. (c) 674 of 2017 in *Madha Medical College and Research Institute through its Managing Director v. Union of India*, we decline to grant any relief in respect of academic year 2017-18 to the petitioner...”

37. In *Karpagam Faculty of Medical Sciences & Research v. Union of India and others*¹⁰, it has been stated:

“The benchmark and the minimum standards for these proposals are bound to be different and we must presume that the expert body, such as MCI and the Hearing Committee in which one member of the OC also participated, were fully aware of the essentialities and pre-conditions for grant of recognition/approval. Since the decision of the Competent Authority of the Central Government is based on such inputs, it is not open for us to sit over that decision as a Court of appeal.”

38. In *Annai Medical College & Hospital and Anr. v. Union of India and another*¹¹, Writ Petition (Civil) No. 525 of 2017, the Court referred to the decision in *Varunarjun Trust and Anr. v. Union of India and Ors.* and directions have been issued as in *Royal Medical Trust*⁷ (supra).

39. As noted earlier, an institution has to remain compliant and necessity for remaining compliant becomes more important as the institution enters the renewal year and thereafter for grant of approval and recognition under Section 11 (2) of the Act. At the time of consideration of recognition, the compliance is viewed and scrutinized with great rigour and strictness. What may be treated as a minor deficiency at the initial stage may not remain so when the institution/college proceeds from year to year. In the instant case, we have already held that surprise inspection in law is permissible and the said inspection is not tainted with mala fide, as alleged. Once we arrive at such irresistible conclusion, the order passed by the Central Government with the assistance of the Hearing Committee cannot be flawed.

40. Though we have so held, we think it appropriate to direct that the students who have been admitted in the respective courses shall be permitted to continue in the courses and the students who pass out from the institution, the MCI shall see to it that they are conferred degrees. The MCI is directed to conduct an inspection for recognition keeping in view the academic year 2018-19 and if during the inspection any deficiency is noticed, the same shall be intimated to the petitioner No. 2 institution and thereafter, process shall be carried out keeping in view the principles of natural justice in mind and the principles stated in IQ City Foundation (supra). The inspection shall be carried out as per the schedule by the MCI for grant of recognition for the academic year 2018-2019 and to avoid any kind of uncalled for situation, the application submitted for the academic year 2017-2018 shall be treated as application for the academic year 2018-2019. The bank guarantee furnished by the institution shall not be encashed by the MCI and the petitioners shall keep it alive.

41. The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

Judgment Referred.

¹(2016) 7 SCC 0353

²(2017) 8 SCALE 0369

³(2015) 10 SCC 0019

⁴(2013) 10 SCC 0060

⁵(1992) Supp.1 SCC 0222

⁶(2011) 11 SCC 0530

⁷(2017) 11SCALE 0307

⁸(2017) 11 SCALE 0330

⁹(2017) 11 SCALE 0372

¹⁰(2017) 11 SCALE 0435

¹¹WP(C) No.787 of 2017