

SUPREME COURT OF INDIA

Medical Council of India

Vs.

N.C. Medical College & Hospital

C.A.No.9519 of 2018

(Arun Mishra and Indira Banerjee,JJ.,)

13.09.2018

JUDGMENT

Arun Mishra,J.,

SLP(C)No.21859 of 2018

1. Medical Council of India (in short, 'the MCI') is in appeal as against the judgment and order passed by the High Court allowing the writ petition of the medical college to admit 150 students for the academic year 2018-19 and in view of G.O. dated 31.5.2018 passed by the Government of India granting permission subject to the outcome of the writ petition in view of mandatory interlocutory order dated 29.5.2018 requiring the Government of India to accord approval to the college by 31.5.2018, though the said interlocutory order dated 29.5.2018 also permitting provisional admissions was set aside by this Court in Civil Appeal No.6001 of 2018.
2. The case has a chequered history. After the N.C. Medical College had obtained Essentiality Certificate and affiliation of the University and thereafter the conditional permission of the Oversight Committee enabled it to admit 150 students in the academic session 2016-2017.
3. Pursuant to the letter dated 11.8.2016 of the Oversight Committee, the MCI took a verification inspection on 7/8.11.2016 and in view of the deficiencies noticed by the Inspectors, recommendation was made to the Central Government to debar the college to admit students for two academic sessions 2017- 2018 and 2018-2019. The Bank Guarantee was ordered to be encashed. The recommendations of the MCI were accepted by the Government of India vide its order dated 10.8.2017.
4. In the year 2015, on 9/10.12.2015 inter alia the deficiency of faculty was found to be 87.7%, shortage of Residents 100%; in all 22 deficiencies were found. On 1.4.2016 again inspection was carried out. The deficiency of faculty was found to be 84.61%, shortage of residents 81.9%, OPD was found non- operational, bed occupancy was zero, in all 13

deficiencies were found. The Government of India accepted the recommendations made by the Executive Council of the MCI on 13.5.2016. However, the Oversight Committee gave conditional permission to remove deficiencies. Letter of permission dated 20.8.2016 was issued for academic session 2016-17.

5. Again after fresh assessment MCI considered the matter in its meeting on 22.12.2016 and noted various deficiencies inter alia that of faculty 27.69%, residents' shortage 36.95%, bed occupancy 46%, there was no ICCU, in all 13 deficiencies were noted. MCI on 26.12.2016 informed the Government of India and recommended that the college be debarred from admitting students for two academic sessions 2017-2018 and 2018-2019. Appellant was called for personal hearing by Government of India on 17.1.2017. Thereafter, report was forwarded to the Oversight Committee vide letter dated 14.5.2017. The Oversight Committee recommended that opportunity of hearing be given to the college which was afforded on 29.5.2017. The recommendations of Committee made after hearing were accepted by MCI and the college was debarred vide letter dated 9.6.2017 from admitting students for two academic sessions i.e. 2017-2018 and 2018-2019.

6. The petitioner filed W.P. No.432/2017 in this Court in which this Court directed the Central Government to consider afresh the material on record after giving opportunity of hearing to the college to the extent necessary. Thereafter, petitioner was again granted opportunity of hearing on 3.8.2017 by Government of India and Hearing Committee. In view of a large number of deficiencies, the decision was reiterated by Government of India to debar the college for two years and also to permit MCI to encash the bank guarantee of Rs.2 crores.

7. On 9.10.2017, this Court directed fresh inspection to be carried out for the year 2018-2019. The MCI in compliance of order dated 9.10.2017 carried out the inspection assessment on 17.11.2017 and 18.11.2017. Deficiencies of faculty were found to be 9%, shortage of residents 10.2%, in all, 18 deficiencies were noted by inspectors.

8. This Court vide order dated 17.1.2018 directed MCI and Government of India to consider the case for the year 2018-2019 by 31.3.2018. On 19.1.2018 college was given an opportunity of hearing. College submitted certain documents. On the basis of documents, college was informed on 9.2.2018 by MCI that as per documents there were 13 deficiencies which were required to be removed. The college submitted the reply, that was considered by Sub-Committee of MCI on 5.3.2018. Appellant again filed a compliance letter dated 15.3.2018 pointing out that certain deficiencies have further been removed. MCI carried out the inspection on 13.4.2018 in order to verify the compliance that was reported by the college by submitting documents, again following deficiencies were found:

1. "Deficiency of faculty is 9% as detailed in the report.
2. Shortage of Residents is 28.57% as detailed in the report.

3. On random verification, 14 Residents were found to be not staying in the Residents' hostel.
4. Engineering college girls _Kajal Sharma, Anju, Sapexh & Pallavi - are staying in room nos. 303, 310 & 316 allotted to junior Residents.
5. IN SR hostel, Room # 315 was allotted to Annu Khatri. SR, O.G; however on verification it was found that wife of Dr. Abu Siddiq, Asst. Prof. of Pharmacology was staying.
6. List of faculty & Residents joined or promoted after last assessment was not produced.
7. OPD data as given by the Institute are inflated when correlated with investigations being carried out.
8. Bed Occupancy at 10 a.m. on day of assessment as 50%.
9. Patients: 32 patients were not considered in departments of Surgery, Medicine, Psychiatry, TBCD, Orthopedics, General Medicine:
 - Patient Balkishna admitted in female medical ward with complaints of muscle pain, Rash (there was no rash).
 - Mrs. Dhanpati IP no. 70318262 admitted in female ward for Cataract operation, with controlled diabetes.
 - Pt. Shantidevi IP no. 50418176 admitted for controlled Diabetes and no complaints.
 - Patient Renu IP no. 120418621 admitted with diagnosis of Obesity.
 - Patient Aminaben IP no. 1204181621 without any symptoms with diagnosis of Anemia.
 - In Psychiatry Department patient Deepak IP no. 030418314 was admitted from 3rd April with complaints of Anxiety.
 - Patient IP no.03041840 was admitted for mild depression.
 - Another patient was admitted for alcohol withdrawal tremors.
 - In female psychiatry ward patient Santro was admitted with mild depression.
 - In TB Chest ward Pt. Sube Singh was having only mild weakness and burning sensations on tongue.

- Patient Savitri Devi was admitted for COPD but no symptoms were seen.
- In Surgery ward patient Parveen IP no. 120418317 was admitted with complaints of Mild.
- Patient Aminaben was kept after laparoscopic Cholecystectomy done on 4th April having no symptoms.
- Pt. Santosh was indoor for Excision Biopsy for Breast lump for dressing only.
- Patient Mrs. Suman No.10041833 admitted with Diagnosis of Ureteric stone but USG was normal.
- Pt. Sunita No.03041837 was operated for laparoscopic Cholecystectomy on 4th April and kept without any symptoms.
- Patient Seema IP no. 2803182 ureteric stone removal kept for 4 days without any symptoms.
- Pt. Angrejo 260318432 was kept after laparoscopic Cholecystectomy done on 4th April without any symptoms.
- Patient Saroj IP no. 24031878 was kept after ureteric stone removal for 8 days without any symptoms.
- Patient Azar admitted in male surgical ward complained of burning all over the body and no surgical complaints.
- Patient Tejbir Singh operated for Inguinal hernia kept since 3rd April without any complaints.
- Patient Ramesh IP 10041828 admitted with very small umbilical hernia, which patient did not complain of.
- Pt. Paleram 1304187 admitted with very small umbilical hernia, which the patient did not complain of.
- Another patient Paleram had incision and drainage of small abscess.
- Patient Mr. Nanu admitted with diagnosis of BPH had no USG done although he was admitted on 7th April.
- In Orthopedics patient Ritesh was admitted with small hand injury.

- Patient Kidara 0204183 was admitted since 2nd April with diagnosis of Cervical Spondylosis, on asking. the patient complaint of kneelpain.

- Patient Sunii admitted without any Diagnostic X Ray.

- Total 32 such patients were not counted.

- Hence 32 patients were deducted out of 182 admitted patients. So bed occupancy is calculated at 150 patients.

10. There were only 6 Major & 4 Minor Operations on day of assessment.

11. There was NIL Normal Delivery on day of assessment.

12. CT Scan is not available.

13. In many wards, Demonstration rooms are non-functional & not furnished.

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

On consideration of report of assessors, the Executive Committee of MCI decided to recommend to Central Government not to renew the permission for Academic session 2018-2019. On 4.5.2018, a decision was taken by the Oversight Committee to approve the decision of the Executive Committee.

9. At the aforesaid stage even before the decision was taken by Government of India W.P. [C] No.13366/2018 came to be filed in the High Court of Punjab & Haryana at Chandigarh, in which interlocutory order was passed by the High Court on 29.5.2018. The High Court directed provisional admissions for current year i.e. 2018-2019 and mandatory interim directions to Government of India to grant permission to College by 31.5.2018. Following interim order was passed by the High Court:

“We permit the provisional admission for the current Session 2018- 19 but subject to the following condition:-

The MCI shall conduct the inspection as indicated above within a period of 2 weeks from today and in case the College is still found deficient, it shall apprise the college within one week of its inspection so that they can make the college compliant with respect to the latest inspection of the MCI. MCI would then again conduct an inspection within a period of one week of the compliance report submitted by the College, to ensure no deficiency.

Report in this regard would also be submitted to the Court by the next date of hearing. The students shall be put on notice while granting them admission about the pendency

of the instant writ petition. The petitioner institute shall also furnish an undertaking that they would abide by all the conditions required by the MCI in this regard.

The UOI shall issue necessary Letter of Permission by 31.05.2018. To come up on 11.07.2018 for further proceedings.”

10. The aforesaid interlocutory order was questioned in this Court in C.A. No.6001/2018. This Court on 4.7.2018 allowed the appeal and order dated 29.5.2018 was set aside. It was noted by this Court that inspection was taken repeatedly, deficiencies were found, scheme was never approved by the MCI and Central Government. It was only because approval accorded by this Court mandated Oversight Committee, college was permitted to make admissions for the academic year 2016-17 and thereafter a decision was taken to debar the college for two years. On physical verification in compliance of the order passed by this Court, again deficiencies were found and when the matter was pending at the level of Central Government, writ petition was filed in which aforesaid interim direction was passed. This Court relying upon the decisions in *Medical Council of India v. Rajiv Gandhi University of Health Sciences & Ors*¹., *Medical Council of India v. JSS Medical College & Anr*²., *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) & Ors*³. and *Dental Council of India v. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli & Ors*⁴. observed that the High Court was not at all justified in passing interim directions.

11. Thereafter, the High Court by yet another interim order directed fresh inspection to be made by MCI within seven days during the pendency of the writ petition in the High Court. Against the said interim order also SLP was filed by MCI in this Court and vide order dated 30.7.2018 in SLP [C] No.19405/2018, this Court observed that the High Court should have taken a call whether further inspection was required at the time of hearing of the case finally as inspection report was not to be considered by the High Court. This Court directed that the matter be decided finally. Thereafter by impugned judgment and order, allowing the writ petition, has been passed by the High Court. High Court has relied upon the order dated 31.5.2018 passed by Central Government though it was passed pursuant to the mandatory interim direction issued on 29.5.2018 and was subject to ultimate outcome of writ application by the High Court. The High Court has held that since the Central Government has granted permission and there is candid acceptance of the claim of petitioner by the Government, the petition had been allowed. Following is the operative portion of the order passed by High Court:

“During the course of hearing the Government granted its approval to the College but observed it is conditional, without specifying any of them. For the purpose of reference, the relevant portion of the communication dated 31.5.2018 is extracted herebelow:

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

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

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

4. The permission is further subject to the conditions stipulated by the Hon'ble High Court in the interim order dated 29.5.2018.”

This exposes them equally to a charge of arbitrariness and also betrays that the left hand knows not what the right is doing. We are thus of the opinion that the impugned orders debarring the college for making admission for two academic sessions and encashment of Bank guarantee suffer from the vice of arbitrariness and deserve to be set aside. In view of the fact that the Government has granted an approval to the College for the academic session 2018-19 which was, however, made subject to the orders passed by this Court, we are of the opinion that in view of the candid acceptance of the claim of the petitioner by the Government, instant petition deserves to be disposed of.“

12. The High Court has also taken into consideration the correspondence and compliance reports which were filed by the college and has considered the contents of even what was placed on the website as information by the college as to the strength of its faculty. As per that, the deficiency was of three members i. e. 4.6% as such the report of MCI assessors that the deficiency was 9.2% has been rejected. High Court has observed that once the compliance report was submitted and in response thereto MCI had written that still there were few specific deficiencies, the High Court inferred that in view of the letter of MCI, other deficiencies had been removed. As such the fresh inspection report finding out the new deficiencies has been discarded. High Court has also observed that due and proper opportunity has not been given to the college.

13. It was urged by learned senior counsel on behalf of MCI that the High Court has virtually tried to sit in appeal on the report of assessors. The deficiencies were found by a team of inspectors consisting of independent persons of repute, there was nothing to doubt its correctness. Permission accorded by Government of India on 31.5.2018 could not have been relied upon by the High Court. Even the self-serving website contents of the college, have been taken into consideration for ignoring the report of the inspectors. High Court has committed illegality while allowing the writ application. The impugned order is liable to be set aside. Learned counsel has relied upon decisions of this Court in *Ashish Ranjan & Ors. v. Union of India & Ors*⁵. and *Ponnaiyah Ramajayam Institute of Medical Sciences v. Union of India & Anr*⁶.

14. On the other hand, learned senior counsel appearing on behalf of the college, made an endeavor to convince this Court that report of the assessors based on inspection dated 13.4.2018 deserves to be discarded. Deficiencies of faculty and residents were not there and as some of them reported late and few were on leave, the members of faculty and residents

have been excluded by the assessors on impermissible grounds. Bed occupancy was also adequate. Patients were wrongly excluded. There was normal delivery on the date of inspection. Anyhow or somehow deliberately the deficiencies have been culled out in the inspection report. Thus, the decision of the High Court is appropriate and does not call for interference.

15. After hearing the learned counsel, we are of the opinion that order of High Court is not sustainable. It is apparent from impugned judgment and order that High Court has totally ignored and overlooked that order dated 29.5.2018 passed by it had been set aside by this Court in CA No.6001/2018. The High Court had issued a mandatory interim direction on 29.5.2018 to Central Government to accord permission by 31.5.2018, it was not open to High Court to rely upon order dated 31.5.2018, which was a provisional order passed in compliance of the interim order dated 29.5.2018, said order was set aside by this Court in C.A. No.6001/2018 as it was not legally permissible to pass such order. Nothing more need be said about the interim order. Once the order has been set aside, the order of Government of India dated 31.5.2018 which was passed pursuant to order dated 29.5.2018 could not have been relied upon by the High Court to allow or to dispose of the writ application holding that Central Government has tacitly accepted the claim of the college. It was wholly impermissible act and it virtually gave premium to the college on the basis of the interim order that was set aside by this Court. The High Court gravely erred in law to rely upon the very permission granted by Government of India under an interim mandatory order dated 29.5.2018, which could not have been passed and was set aside. The Government of India has clearly mentioned in the order dated 29.5.2018 that the permission was subject to condition stipulated by the High Court in interim order dated 29.5.2018. High Court could not have acted upon it as that is clearly derogatory to order of this Court dated 4.7.2018 passed in C.A. No.6001/2018. Thus, the order passed by the High Court lacks judicial propriety and also tantamounts to ignoring the effect of the order dated 4.7.2018 passed by this Court.

16. It is apparent that the college was given permission by the Oversight Committee of this Court for the session 2016-2017. It was a conditional permission as deficiencies existed at the given time. The Government of India as well as MCI on their own did not grant permission at any point of time in view of the reports of inspections which were undertaken time and again during the last three years.

17. The observations made by the High Court that correspondence by MCI indicated that certain deficiencies have been removed. The High Court has also referred to the website contents of the college to hold the deficiencies of the faculty to be 4-5% i.e., within permissible limit. The aforesaid reasonings and exercise done by the High Court is not in accordance with law. As a matter of fact, when certain deficiencies have been pointed out and paper compliance thereof has been reported by the college that cannot by itself be said to be enough and it cannot be presumed that by reporting paper compliance it can be assumed that in fact compliance had been made. Otherwise, it would become easy to report paper compliance in no time without doing it actually in the hospital/college. As a matter of fact, there has to be actual verification of authenticity of such claim in the inspection. Once the

compliance report has been submitted that has to be verified by making inspection and when it has been carried out and various other deficiencies have been found, they have to be taken into consideration and could not have been ignored as done by the High Court.

18. On the one hand, the High Court has doubted the report of inspection and for that surprisingly relied on the self-serving contents of the website of the college. There is nothing to vouch for the authenticity of the website information. It is not what the institution asserts on website but what is actually found on inspection, that has to be considered by the court and while exercising judicial review it is settled law that court cannot sit in appeal over the report of the assessors as observed in *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS)*⁷, thus :

“21. A perusal of the decision of the High Court clearly indicates that it considered the latest report of the Inspection Team as if it was hearing an appeal against the report. In doing so, the High Court went into great details on issues relating to the number of teaching beds in the hospital, the limitations in the OPD Department, the number of units available in the subjects of General Medicine, Pediatrics etc., bed occupancy, number of Caesarean sections, discrepancy in data of major and minor operations, computerization in the institution, number of patients in the ICU, number of static X-ray machines, deficiency of examination halls, lecture theatres, library, students hostel, interns hostel, playground etc. etc. Surely, this was not within the domain of the High Court in exercise of its jurisdiction under Article 226 of the Constitution.

22. 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.”

19. It was contended on behalf of college that deficiency of faculty has been found to be 9% as given in the report of MCI. In fact, there was no deficiency. Two faculty members were on leave. The appointments of two more faculty members were under process. The residents’ doctors shortage has also been found to be 28.57%. CT scan machine was stated to be under installation. Bed occupancy was found at 10 a.m. at 50%, 32 patients were excluded as they were not genuine as per the assessors for reasons given in the report. Major and minor surgeries were found to be very less. College contended that patients were genuine and adequate surgeries were done. Other deficiencies found on inspection have also been disputed by the college.

20. In our opinion, the contentions are baseless, the deficiency of faculty has been culled out in the inspection report in detail. There was deficiency of 9 members of teaching faculty and deficiency of 14 resident doctors out of a total of 49. Some girls getting engineering

education were found to be staying in the residents' hostel. Duty roster of faculty and Residents was not produced till 2.00 p.m. List of faculty and Residents joined after the last assessment was not produced. In many wards, demonstration rooms were not functional and non-furnished. It was submitted that certain members of faculty reported late on that day and one member suffered fracture and brother of another member was ill who breathed his last on the same day. Even if 2 incumbents on leave are excluded still there was shortage, 11.00 a.m. time was fixed in guidelines so as to make the assessment. The Faculty Members came too late, cannot be a ground to find fault with the report of the assessors which has to be undertaken as per norms fixed for them. At the time of inspection, the Faculty should be present otherwise in a few hours any number of members can be arranged, otherwise very purpose of inspection would be defeated. Be that as it may. Report of the assessors cannot be faulted; the court cannot sit in appeal over it and cannot go into the disputed facts.

21. In *Kanachur Islamic Education Trust (R) v. Union of India & Anr*^s. it has been observed that affected party should be given an opportunity to meet the case effectively and the passing of just decision supported by reasons is part of fair hearing. It is the duty of the adjudicator to ensure fairness in procedure and action, the Court observed:

“21. No endeavour whatsoever, in our comprehension, has been made by the Respondents and that too in the face of an unequivocal direction by this Court, to fairly and consummately examine the materials on record in details before recording a final decision on the issue of confirmation or otherwise of the LOP granted to the Petitioner's college/institution as on 12.09.2016. True it is that the Regulations do provide for certain norms of infrastructure to be complied with by the applicant college/institution for being qualified for LOP depending on the stages involved. This, however, does not obviate the inalienable necessity of affording a reasonable opportunity of hearing to the person or the college/institution concerned vis-a-vis the scheme for establishment of a college before disapproving the same. The manner in which the Respondents, in the individual facts of the instant case, have approached the issue, leads to the inevitable conclusion that the materials on record do not support determinatively the allegation of deficiency, as alleged. The Respondents having failed to persuasively establish the said deficiencies, as noted in the impugned order dated 10.08.2017, in spite of opportunities available including the one granted by this Court, such a determination cannot be sustained in the facts and circumstances of the case. We are of the considered opinion that in view of the persistent defaults and shortcomings in the decision making process of the Respondents, the Petitioner's college/institution ought not to be penalised. Consequently, on an overall view of the materials available on record and balancing all relevant aspects, we are of the considered opinion that the conditional LOP granted to the Petitioner's college/institution on 12.09.2016 for the academic year 2016-17 deserves to be confirmed.”

There is no dispute with the aforesaid proposition. However, in the instant case fair opportunity has been given and the reasons in detail were mentioned by the assessors and

MCI. It was a case of repeated inspections having been made. In view of deficiencies found permission could not have been accorded for session 2018-19.

22. Yet for another reason we do not propose to interfere. In *Ashish Ranjan v. Union of India*⁹, this Court has referred the time schedule for granting permission etc. under the MCI Regulations by which date admissions etc. are to be granted thus:

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

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

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

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

<i>Sl.Nos</i>	<i>Schedule for admission</i>	<i>Seats to be filled up by the Central Government through the All-India Entrance Examination</i>	<i>Seats to be filled up by the State Government/Institution</i>
1.	Conduct of entrance examination	Between 1 st to 7 th May	Between 10 th to 17 th May
2.	Declaration of the result of the qualifying exam/entrance exam	By 1 st June	By 1 st June
3.	1 st round of counselling/admission	To be over by 25 th June	Between 6 th July to 15 th July
4.	Last date for joining the allotted college and the course	By 5 th July	By 22 nd July
5.	2 nd round of counselling/admission for vacancies.	Between 23 rd July to 30 th July	Between 10 th to 22 nd August
6.	Last date of joining for the 2 nd round of counselling/admission.	By 9 th August	By 28 th August
7.	Commencement of academic session/term	1 st of August	1 st of August

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8.	Last date up to which students can be admitted/joined against vacancies arising due to any reason.		By 31 st August
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Note 1.- All India Quota Seats remaining vacant after last date for joining, i.e. 9th August will be deemed to be converted into state quota.

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

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

The aforesaid dates are over, as such, in the instant case, it is not possible to issue directions at this juncture for the session 2018-2019. In view of the deficiencies and the law enunciated by this Court in the aforesaid decisions, the High Court has clearly exceeded its power while allowing the writ application, passing of repeated interim orders was also not warranted.

23. Thus, unhesitatingly we have no option except to set aside the judgment and order passed by High Court. At the same time, it would be open to the college to apply for the next academic year 2019-2020 by depositing requisite fees etc. Thus, we allow the appeal and set aside the judgment and order passed by the High Court.

No costs.

Judgment Referred.

¹(2004) 6 SCC 0076

²(2012) 5 SCC 0628

³(2016) 11 SCC 0530

⁴(2017) 13 SCC 0115

⁵(2016) 11 SCC 0225

⁶(2017) 16 SCC 0719

⁷(2016) 11 SCC 0530

⁸(2017) 15 SCC 0702

⁹(2016) 11 SCC 0225