A ROHILKHAND MEDICAL COLLEGE & HOSPITAL, BAREILLY

*v.*

MEDICAL COUNCIL OF INDIA & ANOTHER

(Writ Petition (Civil) No. 585 of 2012

B SEPTEMBER 06, 2013

**[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]**

*Medical Colleges Regulation (Amendment 2010 Part II):*

C *Clause 8(3)(1)(d) – Revocation of permission/recognition for award of MBBS degree – Approval for renewal of permission to Medical College for increased intake from 100 to 150 seats for academic year 2013-2014 – Revoked by MCI on receipt of information from CBI with regard to conspiracy* D *between the Chairman of the Medical College on the one hand and public functionaries of Union Ministry and Government Hospital on the other, which led to issuance of order passed for additional intake of students for academic year 2008-2009 – Held: CBI, in its charge-sheet, pointed out* E *serious infirmities in the report submitted by the inspection team constituted by the Union Ministry – CBI investigation has revealed that fraud was practiced by the Central team as well as the college to get the sanction for the 3rd batch of MBBS students for the academic year 2008-09 – That was sufficient* F *for the MCI to take action, and revoke the letter of permission granted for academic year 2013-14 – The decision of MCI is in accordance with Regulations 8(3)(1)(d) – Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999.*

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***Indian Medical Council Act, 1956:***

*ss. 10A and 19A — s. 10A, mandates that when a new medical college is to be established or the number of seats*



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*to be increased, the permission of Central Government is a pre-requisite — s.19A obliges MCI to prescribe minimum required standards for medical education and the recommendations made by MCI to Central Government carry considerable weight — In the instant case, MCI constantly on all the occasions, recommended to Central Government not to renew permission for admission of the third batch for the academic year 2008-09, but in spite of the same, a Central Team was appointed, a favourable report was got and permission was accorded by Central Government for the year 2008-09, which was the subject matter of CBI investigation.*

*Education/Educational Institutions:*

*Admission to medical courses — Court took notice with concern, of unprecedented growth of Technical and Medical Institutions in the country which has resulted in widespread prevalence of various unethical practices and emphasized that there is extreme necessity of a Parliamentary Legislation for curbing these unfair practices – Legislation – Judicial notice – Constitution of India, 1950 – Art. 21.*

**The petitioner-Medical College and Hospital was established in the year 2005. It started the first M.B.B.S. course during the year 2006-07 with an annual intake of 100 seats for which permission was granted by the Central Government u/s 10A of the Indian Medical Council Act, 1956. The Medical Council of India (MCI) granted recognition to the College to award M.B.B.S. Degree by the University concerned. The College later submitted an application to the MCI for extension of renewal of permission for admission of 3rd batch of 100 seats of M.B.B.S. for the academic year 2008-09. The MCI after getting inspections of the College conducted, and on receipt of reports of the inspection teams and compliance reports submitted by the College, intimated the Central Government by letters dated 16.04.2008, 14.6.2008 and**

A 4.9.2008 not to renew the permission for admission of the 3rd batch of students for the academic session 2008-09. The Central Government on receipt of report of the inspection team constituted by it, also asked the College on 27.7.2008 not to admit any fresh batch of MBBS B students for the academic year 2008-09. However, on 12.9.2008, the College requested the Central Government to accord permission for 50 students of MBBS for the academic session 2008-09. Thereupon the Union Ministry constituted another team of two doctors, who conducted C inspection of the College on 25.9.2009 and on the basis of its report, the Central Government issued the letter dated 26.9.2008 according sanction for renewal of permission for admission of 3rd batch of 100 students for the academic year 2008-09.

D The MCI, by its letter dated 20.06.2013 conveyed its order of approval dated 4.6.2013 for renewal of permission for admission for the second batch of MBBS students against the increased intake i.e. from100 to 150 seats to the College for the academic year 2013-14. In the E meantime, the MCI received a confidential letter dated 11.07.2013 from the Central Bureau of Investigation informing that it had registered a case against the Chairman of the College and officers of the Union Ministry of Health and Family Welfare, u/s 120B IPC and s. 13(2) F read with s. 13(1)(d) of the Prevention of Corruption Act, 1988. A Charge-sheet was also enclosed along with the letter. The MCI by order dated 13.7.2013 revoked its decision dated 04.06.2013 and, communicated the same to the College. The College challenged legality of the said G decision in the instant writ petition.

Dismissing the writ petition, the Court

HELD: 1.1. The Medical Council Act, 1956, especially s. 10A thereof, mandates that when a new medical college H is to be established or the number of seats to be

**increased, permission of the Central Government is a pre-requisite. Section 19A obliges the MCI to prescribe minimum required standards for medical education and the recommendation made by MCI to the Central Government carry considerable weight, it being an Expert Body. MCI has prescribed the regulation – "Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999". In order to verify the minimum requirements, MCI gets inspection conducted by Inspectors, who are experts and submit their reports on the availability of the staff - teaching and residents - and other infrastructural facilities, clinical availability, etc. as per the regulations. [para 28] [713-G-H; 714-A-C]**

**1.2. In the instant case, the MCI constantly on all the occasions, recommended to the Central Government not to renew permission for admission of the third batch for the academic year 2008-09, but in spite of the same, a Central Team was appointed, a favourable report was got and permission was accorded by the Central Government for the year 2008-09. CBI in its charge-sheet has categorically reported that this was done on the basis of bogus, fake and forged records. CBI noticed that the college authorities had produced fabricated and forged documents before the inspection team and the team failed to verify the correctness or otherwise of those documents. CBI investigation has revealed that fraud has been practiced by the Central Team as well as the college to get the sanction for the 3rd batch of MBBS students for the academic year 2008-09. CBI's investigation *prima facie* establishes the criminal conspiracy between the Chairman of the College and the then Union Minister of Health and Family Welfare along with the then Deputy Secretary, Ministry of Health and Family Welfare and two doctors of the Government Hospital which led to the issuance of the order passed for the additional intake of 50 students for**

A the academic year 2008-09 on 26.09.2008. The CBI, in its charge-sheet, points out serious infirmities in the report submitted by the central team, which conducted the inspection of the College on 25.09.2008. [para 25-27 and 29] [709-G-H; 710-B-C; 713-E-G; 714-D-E]

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1.3. When sanction was accorded and communicated by letter dated 20.06.2013 it was categorically stated by the MCI that the same was accorded subject to certain conditions. It was stated that in case false/wrong declaration or fabricated documents C were used for procuring permission of the Board of Governors of the increased intake and if said misconduct was brought to the notice or comes to the knowledge of the MCI, at any stage during the current academic year (2013-14) institution/college would not be entitled to be D considered for renewal of the permission against increased intake for the next academic year and that renewal of permission against the increased intake for the academic year 2013-14 and for the next academic year would be liable to be revoked. Having received the letter E of the CBI as well as the charge-sheet, the decision taken by the MCI on 13.07.2013 revoking the letter of permission granted for the academic year 2013-14 is in accordance with Clause 8(3)(1)(d) of the Establishment of Medical Colleges Regulation (Amendment 2010 Part II), which F states that when MIC finds that the college has employed fake/forged documents for renewal of permission/ recognition for processing applications etc., that institute will not be able to be considered for renewal of permission/ recognition for award of MBBS Degree/ G processing the application for post-graduate courses for two academic years i.e. that academic year and the next academic year. [para 30-32 and 35] [714-F-H; 715-A-B; 717-C-D]

1.4. MCI need not wait till the culmination of the trial

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**initiated on the basis of the charge-sheet filed by the CBI. The investigation by a premier agency like the CBI has *prima facie* revealed that the college has used fake and forged materials to get sanction for the intake for the year 2008-09 and that is sufficient for the MCI to take action in accordance with the Regulations 8(3)(1)(d) of 2013 Regulations. [para 36 [717-F-G]**

**COURT'S CONCERN**

**2.1. Investigation of CBI, however, reveals a sorry state of affairs, which is an eye-opener for taking appropriate remedial measures in future so that medical education may attain the goals envisaged by the IMC Act and the Regulations and serve the community. It indicates the falling standards of our educational system at the highest level; sometimes even at the level of the Central Government making a serious inroad to the right to life guaranteed to the citizens of the country under Art. 21 of the Constitution. [para 39] [719-B-C, D-E]**

*T.M.A. Pai Foundation and others* v. *State of Karnataka and others* **2002 (3) Suppl. SCR 587 = (2002) 8 SCC 481 and** *P.A. Inamdar and others* v. *State of Maharashtra and others* **2005 (2) Suppl. SCR 603 = (2005) 6 SCC 537 – referred to.**

**2.2. The Court took notice with concern of the unprecedented growth of the Technical and Medical Institutions in the country which has resulted in widespread prevalence of various unethical practices. Collection of large amount by way of capitation fee, exorbitant fee, donation etc, by many of such self financing institutions, has kept the meritorious financially poor students away from those institutions. This Court can also take judicial notice of the fact that many a times the medical colleges, engineering colleges, etc. are established after availing large amounts by way of loans from the financial institutions and other borrowings, with**

A **no funds of their own, and once the college gets approval and students are admitted, loan availed of is being repaid from the capitation fee charged from the students and ultimately that amount constitute their capital. Many a times, even without any sufficient facilities they put**
B **pressure on the various agencies and the Central Government and get approval overlooking the regulatory authority, like MCI, which adversely affects the quality of medical education. [para 24 and 27] [709-D-E; 713-B-D]**

**2.3. The Court also took notice that current policy of**
C **the Central Government in the higher education is to provide autonomy of institutions, but adoption of unfair practices is a serious violation of the law. Few States have passed some legislation to prohibit demand/ collection of capitation fee which have no teeth, the**
D **institutions who indulges in such practices can get away by paying some fine, which is meager. It is, therefore, emphasized that there is extreme necessity of a Parliamentary Legislation for curbing these unfair practices. [para 41-42] [720-B-E]**

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**Case Law Reference:**

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| **2002 (3) Suppl. SCR 587** | **referred to** | **para 38** |
| **2005 (2) Suppl. SCR 603** | **referred to** | **para 38** |

F CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 585 of 2013.

Under Article 32 of the Constitution of India.

G Rakesh Kr. Khanna, ASG, Mukul Rohatgi, Guru Krishna Kumar, Mukul Gupta, Amrendra Sharan, Abdhesh Choudhary, Amit Jaiswal, Rajiv Ranjan Dwivedi, Amit Kumar, Avijit Mani Tripathi, Rituraj Kumar, V. Mohana, Anirudh Tanwar, Dushyant Arora, Mudrika Bansal, Komal Jaiswal, B. Subrahmanya
H Prasad for the appearing parties.

The Judgment of the Court was delivered by

**K.S. RADHAKRISHNAN, J.** 1. The petitioners have invoked the extraordinary jurisdiction of this Court conferred under Article 32 of the Constitution of India to quash the letter dated 13.07.2013 issued by the Medical Council of India by which the permission granted for renewal of admission for additional intake of students for the academic session 2013-2014 was revoked.

2. Rohilkhand Medical College and Hospital was established by Rohilkhand Educational Charitable Trust in the year 2005. The Medical College started the first M.B.B.S. Course during the year 2006-07 with an annual intake of 100 seats for which permission was granted under Section 10A of the Indian Medical Council Act, 1956 (for short "the IMC Act) by the Central Government. Later, the Medical Council of India (for short "the MCI") granted recognition to the College to award M.B.B.S. Degree granted by M.J.P. Rohilkhand University, Bareily, U.P. The College is also conducting post-graduate courses during the year 2011-12.

3. Permission was granted under Section 10A of the IMC Act for admitting the second batch of 100 students in the year 2007-08. The College later submitted an application for extension of renewal of permission for the admission of 3rd batch of 100 seats of M.B.B.S. for the academic year 2008-09 to the MCI. The MCI after processing the application constituted a medical team for inspection of the College. The team conducted the inspection on 1st and 2nd April, 2008. The MCI team then submitted its report to the Secretary, MCI, New Delhi on 02.04.2008. The MCI team pointed out the following deficiencies in the College as per the MCI Regulations:

> "There was a shortage of teaching faculty by 21.05% (24 out of 114) and residents by 37.03% (30 out of 81) As under:

A (a) Professor – 4

(b) Associate Professor – 13

(c) Asstt. Professor – 3

B (d) Tutor – 4

(e) Sr. Resident – 16

(f) Jr. Resident – 14"

C 4. The MCI team also noticed that OPD attendance on the date of inspection was only 421 as against the minimum requirement of 850-900 and OPD bed occupancy was only 55% as against the minimum requirement of 83-85%. The MCI team inspection report, as per the Board Regulation, was D placed before the Executive Committee in its meeting held on 14.04.2008 and it intimated its decision to the Central Government not to renew the permission for the admission of the 3rd batch of students for the academic session for the year 2008-09, vide its letter dated 16.04.2008. A copy of the letter E was also sent to the Principal of the College with a request to submit the compliance in respect of the deficiencies pointed out by the MCI team on or before 30.04.2008.

5. The College later submitted its "compliance report". The MCI again constituted a team to examine whether the College F had rectified the deficiencies pointed out by the MCI team. The MCI team again conducted an inspection on 20.05.2008 and submitted its report to the MCI. The report pointed out the following deficiencies :

G "(1) There was a shortage of teaching faculty by 18% (22 out of 110) and Residents by 5% (5 out of 82) as under:

(a) Professor – 6

(b) Associate Professor – 12

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(c) Asstt. Professor – 4

(d) Tutor – NIL

(e) Sr. Resident – 3

(f) Jr. Resident – 2

(ii) The OPD attendance on the date of inspection was only 691 against the minimum requirement of 850-900.

(iii) IPD bed occupancy was only 55(74%) against the minimum requirement of 83-95%."

6. The MCI inspection report was later placed before the Executive Committee of MCI in its meeting held on 13/14-06-2008 and it was decided by the Committee not to renew the permission for the admission of 3rd batch of students for the academic year 2008-09. The Executive Committee's decision was communicated to the Central Government vide its letter dated 14.06.2008. The then Under Secretary, Ministry of Health and Family Welfare, New Delhi on 19.06.2008 forwarded the letter received from the MCI to the College requesting to submit the compliance in respect of the deficiencies pointed by the MCI inspection team. The College then forwarded the compliance report to the Secretary, MCI vide its letter dated 24.06.2008. The College also sent another letter dated 01.07.2008 to the Secretary, Ministry of Health and Family Welfare, New Delhi stating that the deficiencies pointed out by the MCI team were of minor nature and, therefore, requested to grant necessary permission by the Central Government for admission of the 3rd batch for the academic year 2008-09.

7. The Chairman of the Roholhand Medical College and Hospital on 03.07.2008 sent a letter to the Health Minister, Government of India requesting to grant necessary permission and the Central Government, for admission of the 3rd batch, followed by yet another letter on 04.07.2008 to the Secretary,

A Ministry of Health and Family Welfare, New Delhi.

8. We notice, following the letter received by the Minister as well as the Secretary, the Central Government constituted a team of two doctors to carry out the compliance verification/ B inspection of the College. The central team conducted the verification inspection on 11.07.2008 and submitted its report to the Deputy Secretary, Ministry of Health and Family Welfare, New Delhi on 10.07.2008. The central team pointed out the following deficiencies:

C "(i) The shortage of teaching staff was found more than 11% (13 out of 116) as under:

(a) Professor

(b) Associate Professor – 7 D

(c) Asstt. Professor – 2

(d) Tutor – NIL

(e) Sr. Resident – 1 E

(f) Jr. Resident – 1

(ii) The faculty members holding same post were getting different salaries. Some of faculty members F were getting less salary than resident doctors. Some of the Junior Residents were old in age. Some of Sr. Residents presented with their declaration forms seemed to be specialists doing private practice, as they were in the town much before the inception of the College/Institution. Some G of the area and buildings were under construction, which was not advisable in working in working areas."

9. The then Under Secretary, Ministry of Health and Family H Welfare, New Delhi then sent a letter dated 27.07.2008 to the

Chairman of the College requesting him not to admit any fresh batch of MBBS students for the academic year 2008-09. The College was also advised to rectify the deficiencies and send compliance report for consideration for the academic year 2009-10 for further admission.

10. The Chairman of the College then filed a Writ Petition (C) No.294 of 2008 before this Court which was clubbed with other similar writ petitions filed by other medical colleges. This Court passed an order on 03.09.2008 directing the MCI to submit its recommendations to the Central Government within two days and Ministry of Health and Family Welfare was directed to consider the issue of grant of permission within a week. Further it was also directed that the College be given an opportunity of being heard by the Ministry of Health and Family Welfare, New Delhi.

11. The MCI, in the meantime, conducted yet another inspection of the College on 19.08.2008 and the MCI team submitted its report to the Secretary, MCI again pointing out the following deficiencies:

"(i) The shortage of teaching staff was found to be 23.68% (27 out of 114):-

Professor – 3

Associate Professor -13

Asstt. Professor - 5

Tutor – 5

(ii) The shortage of resident was found to be 20.9% (17 out of 81):-

Sr. Resident – 5

Jr. Resident – 12"

A 12. The MCI report was then placed before the Executive Committee and the MCI in its meeting held on 21.08.2008, decided to inform the Central Government not to renew the permission for admission of the 3rd batch of students for the academic year 2008-09. The decision of the Executive B Committee was communicated to the Central Government vide its letter dated 04.09.2008 with reference to the order passed by this Court on 03.09.2008 in Writ Petition (C) No.294 of 2008, filed the College.

C 13. The Under Secretary, Ministry of Health and Family Welfare, New Delhi then sent a letter dated 09.09.2008 to the Chairman of the College to appear before the Deputy Secretary, (Medical Education), Ministry of Health and Family Welfare, New Delhi on 10.09.2008 along with the compliance report and other documents mentioned in the order passed by this Court D on 03.09.2008. The Chairman of the College then appeared, as directed, on 10.09.2008. The Under Secretary, Ministry of Health and Family Welfare, New Delhi then issued a letter to the Chairman of the College intimating that after considering the facts submitted by the College at the time of personal E hearing and the recommendations of the MCI, it was decided by the Ministry not to grant renewal of permission for admission of 3rd batch of MBBS students for the academic year 2008-09.

F 14. The Chairman of the College then vide his letter dated 12.09.2008, addressed to the Secretary, Medical Education, Ministry of Health and Family Welfare, New Delhi requested him to grant permission for 50 students of MBBS for the academic session 2008-09. The Ministry of Health and Family Welfare, G New Delhi again constituted a central team and deputed the team to inspect the College and submit a report by 25.09.2009 positively. The two doctors then conducted inspection of the College on 25.09.2008 and submitted the report on 26.09.2008 to the Ministry of Health and Family Welfare on the same day. On the basis of that report the Central Government issued a H

letter dated 26.09.2008 according sanction for renewal of permission for admission of 3rd batch of 100 students for the academic year 2008-09. A

15. On receipt of the said letter dated 12.09.2008 from the Chairman of the College, the Under Secretary, Ministry of Health and Family Welfare, wrote a letter on 24.09.2008 to the Secretary, MCI requesting to furnish their recommendations regarding reduced intake. The Secretary, MCI, in turn, intimated that on the basis of the deficiencies pointed out by the MCI team during the inspection of the College on 19.08.2008 the College was grossly lacking facilities even for admission of 50 students. B C

16. MCI team, it is seen, constituted yet another Committee to conduct an inspection of the College on 01.10.2008 and a report was submitted to the MCI on the same day pointing out various deficiencies. The report was submitted to the Executive Committee of MCI in its meeting held on 06.10.2008 and the Committee took a decision to inform the Central Government not to renew the permission for the academic year 2008-09 and urge the Central Government to recall the letter of permission dated 26.09.2008 issued to the College. The decision of the Executive Committee of the MCI was communicated to the Central Government vide its letter dated 06.10.2008. D E

17. We have noticed that the Central Government had accorded approval for 3rd batch of 100 students for the academic year 2008-09 on 26.09.2008, despite the repeated negative recommendations made by the MCI and before the grant of permission on 26.09.2008, the MCI was not even consulted. We have indicated the facts to show the situation that prevailed in the year 2008-09 and the manner in which permission was accorded for intake of 100 students by the Central Government. F G

18. The MCI, following its decision taken on 04.06.2013, H

A vide its letter dated 20.06.2013 decided to convey its approval for renewal of permission for admission for the second batch of MBBS students against the increased intake i.e. from100 to 150 seats to the College for the academic year 2013-14. The approval was granted taking into consideration of the
B assessment report dated 26/27-02-2013 submitted to the Board of Governors of MCI subject to certain conditions which are extracted herein below:

> "I am further directed to inform that you and your institution are fully responsible to fulfill and maintain norms including
C the infrastructure both physical and human resource, teaching faculty and clinical material, etc. throughout the academic year, as stipulated in Regulation of Medical Council of India. In case false/wrong declaration or fabricated documents have been used for procuring
D permission of the Board of Governors for the increased intake and the said misconduct is brought to notice or comes to the knowledge of MCI at any stage during the current academic year, your institution is not liable to be considered for renewal of permission against increased
E intake for the next academic year and this renewal of permission against the increased intake for the next academic year and this renewal of permission against the increased intake is also liable to be revoked for current academic year. Besides, MCI is entitled to take all such
F measures against you and your college/institution as permissible under the law."

19. The MCI, in the meantime, received a confidential letter dated 11.07.2013 from the Central Bureau of Investigation (for
G short "the CBI") informing that the CBI has registered a case against the Chairman of the College and officers of the Ministry of Health and Family Welfare, New Delhi under Section 120B IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "the PC Act"). Charge-sheet was also enclosed along with the letter, which
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was placed before the Board of Governors of the MCI in its meeting held on 12.07.2013. The Board then revoked its decision dated 04.06.2013 and communicated the same to the College vide its letter dated 20.06.2013. The Board of Governors of the MCI informed the College that the letter of permission accorded for renewal of admission of the 2nd batch of students against the increased intake i.e. from 100 to 150 for the academic year 2013-14 would stand revoked with immediate effect.

20. The legality of that decision, as already indicated, is the main issue that arises for consideration in this writ petition.

21. Shri Mukul Rohtagi, learned senior counsel appearing for the petitioners submitted that the letter dated 13.07.2013 revoking the permission granted for admission for the increased intake was mala fide and in violation of the principles of natural justice. Learned senior counsel submitted that a right has already been accrued to the petitioners by virtue of the decision taken by the MCI on 04.06.2013, which was communicated to the College vide its letter dated 20.06.2013. Learned senior counsel submitted that such a decision was validly taken on the inspection report dated 26/27.02.2013. Learned senior counsel submitted that since the College has complied with all the conditions stipulated in the Regulations and that there is no deficiency, as reported by the inspection team, there is no justification in revoking the permission already granted, that too, without giving the petitioners an opportunity of being heard. Learned senior counsel also submitted that mere fact that the CBI has registered a case against few officers of the Ministry of Health and Family Welfare, New Delhi and also against the Chairman of the College is not a ground at all to revoke the permission already granted for the additional intake of students for the academic year 2013-14 since the College has satisfied all the requirements under the Regulations for Establishment of Medical College Regulations, 1999. Learned senior counsel also submitted that even though the Chairman of the College

A has been charge-sheeted, that itself is not a ground to revoke the letter of permission accorded by the Board of Governors, unless he has been convicted by a court of competent jurisdiction in a criminal investigation. Learned senior counsel made a reference to Regulations 3(5) of the "Enhancement of
B Annual Intake Capacity in Under-graduate Courses in Medical College for the Academic Session 2013-14 Only Regulation, 2013 (for short "the Regulation 2013).

22. Shri Amrendra Sharan, learned senior counsel appearing for the students submitted that on the basis of the
C decision of the MCI dated 20.06.2013, 21 students have already secured admission in the College by 10th July, 2013, since they were allotted the College after successfully competing the U.P. Combined Medical Entrance Test (for short "the UPCMET) and the decision taken by the MCI on
D 13.07.2013 would have serious consequences so far as the students are concerned since they would not be able to get admission in any other private institution for this academic year. Learned senior counsel also submitted that the College has facilitated as per the University Grants Commission (UGC)
E Regulations and there is no justification in not permitting the students to continue with their study in the College even if there was some infirmity in the grant of permission granted by the Central Government for the additional intake during the year 2008-09.

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23. Shri Amit Kumar, learned counsel appearing for the Medical Council of India, on the other hand, justified the decision taken by the MCI on 13.07.2013. Learned counsel submitted that the MCI has the power to revoke its earlier decision taken
G on 04.06.2013 if sufficient materials have been brought to its knowledge which have got a vital bearing in the matter of conduct of courses in the College. Learned counsel also submitted and referred to the letter dated 20.06.2013 and pointed out that permission was accorded subject to certain conditions and those conditions have been violated by the

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College. Learned counsel submitted that as per clause 8(3)(1)(d) of the Establishment of Medical Regulations (Amendment 2010 Part II), the MCI has got the power not to renew the permission/recognition, if it is observed later that any institute is found to have acted on fake/forged documents, such an institute could not be considered for renewal of permission/ recognition for the post-graduate courses for two years i.e for the academic year and the next academic year also. Hence, the decision taken by the MCI revoking the letter of permission for renewal of admission of the 2nd batch of students against the increased intake from 100 to 150 students for the academic year 2013-14 was justified.

24. We may notice with concern the unprecedented growth of the Technical and Medical Institutions in this country which has resulted in widespread prevalence of various unethical practices. Collection of large amount by way of capitation fee running into crores of rupees for MBBS and Post-Graduate seats, exorbitant fee, donation etc, by many of such self financing institutions, has kept the meritorious financially poor students away from those institutions. Pressure, it is also seen, is being extended by various institutions, for the additional intake of students, not always for the benefit of the student community and thereby serve the community, but for their own betterment.

25. We are not commenting upon the acceptability, or otherwise, of the charges leveled against the Minister, bureaucrats or the Chairman of the College. But the fact remains, the CBI after conducting an investigation had to charge-sheet them under Section 120B, 468, 471 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act. CBI's investigation prima facie establishes the criminal conspiracy between the Chairman of the College and the then Union Minister of Health and Family Welfare, Government of India, New Delhi along with the then Deputy Secretary, Ministry of Health and Family Welfare, New Delhi, two doctors, one is the

A head of Nephrology VMMV and Safdarjung Hospital and the other is Professor of Department of Community Medicine, VMMC and Safdarjung Hospital, New Delhi which lead to the issuance of the order passed for the additional intake of 50 students for the academic year 2008-09 on 26.09.2008. For
B the prosecution of both the doctors necessary prior sanction was obtained from the competent authority by the CBI.

26. The CBI, in its charge-sheet, points out serious infirmities in the report submitted by the central team, which conducted the inspection of the College on 25.09.2008, which
C are as follow:

> "The above chart clearly proves that accused Dr. Vindu Amitabh and accused Dr. S.K.Rasania were party to the larger conspiracy and they deliberately by way of limiting
D the shortage of faculty to 2% in their report; had glossed over the glaring deficiencies in the strength of the faculty members (15% i.e. 17 out of 115) and thereby, facilitated the private College in getting permission of the Central Govt.
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> Their involvement in the criminal conspiracy is further established by the fact that during the inspection they did not ask the faculty members as to whether they (faculty members) were full timers or part-timers/merely called to make up the members for the purpose of inspection. The
F investigation has established that at least 5 doctors, namely, Dr. Harbeer Singh Sodhi, Dr. Anil Madan, Dr. Birendra Kumar Sinha, Dr. Jamaludin and Dr. Shiv Nath Banerjee, who have been shown as full time faculty members and residents in the records of Rohilkhand
G Medical College, Bareily during 2008, have confirmed that they had never worked as full-timers in the said College during 2008, but were rather, visiting faculty. These facts prove that the inspection report of accused Dr. Vindu Amitabh and accused Dr. S.K. Rasania was perfunctory
H and biased in favour to the private Medical College.

The investigation further disclosed that accused Dr. Vindu Amitabh and accused Dr. S.K. Rasania have claimed to have done personal inspection of the wards and the departments. In their inspection report, they mentioned that the presence (of patients in the OPDs of all Departments was good, the bed occupancy was about 90% and that the ICU was full to its capacity. However, during the investigation , physical verification of 14 patients, who were shown present in the OPD registers on the date of inspection, i.e. 25.09.2003, was got conducted through the Postal Deptt. on the random basis. It was revealed that 09 of them were fake or non-existent. The claim of the accused doctors of the Central Team of having done personal inspection of the wards and the departments, which was one of the important criteria, on the basis of which they gave a green signal to the College, thus turns out to be devoid of merit and a falsehood.

The investigation further revealed that the Central Team comprising of accused Dr. Vindu Amitabh and accused Dr. S.K. Rasania has stated in its report that it accepted the photocopies of the declaration forms, submitted to MCI, for verification. During the investigation, it has been revealed that declaration forms are provided by the College concerned, include details of all faculty members, their educational qualification, appointment letter, identification documents (like PAN card, etc.) documents in support of their residence in the Medical College (like ration card, in order to certify their being permanent faculty members there).

During the investigation, 5 so called faculty members (Dr. Harbeer Singh Sodhi, Dr. Anil Madan, Dr. Birendra Kumar Sinha, Dr. Jamaludin and Dr. Shiv Nath Banerjee) have stated that they used to be called only for the inspections of the said College. They were at best, visiting faculty members. Incidentally, the MCI rules have not

A provision for part-timers or visiting faculty members. Though the said 5 doctors have owned their signatures on their Declaration Forms, they have denied receiving the appointment letters shown to be annexed with their respective declaration forms. They have also stated that B the ration cards, residential certificates, Form-16 (Income Tax) etc. shown as having been issued in their names, were never given to them. Besides, it has been found that they are all bogus/fake and forged, as they (the doctors) were neither resident on the addresses shown in the records nor C had they ever applied for any ration card. The District Supply Officer, Bareilly has denied their issuance and confirmed that the said ration cards are fake and forged. It is pertinent to mention that the fake ration cards have been used by the College authorities to falsely establish D before the MCI Inspectors that th said doctors were their permanent faculty members. Similarly no Form-16 was ever issued to them by the College.

The investigation further disclosed that in case of the aforesaid doctors, the appointment letters were issued in E their name by the College authorities without their knowledge and the details of appointments do not even bear the signatures of their doctors/employees of the College in the acceptable column. This proves the fabrication and use of (forged) documents by the College F authorities, for the purpose of obtaining the approval of Govt. of India on the recommendations of MCI/Central Team deputed by GOI. However, the accused doctors i.e. Dr. Vindu Amitabh and Dr. S.K. Rasania of the Central Team in pursuance of the criminal conspiracy did not G confirm the genuineness of the documents put up by the College authorities and without verifying the documents accepted photocopies of the Declaration Forms and furnished a positive report in favour of the College on the very next day. It is pertinent to mention that despite H mentioning about the presence of such doctors, who were

even practicing in Bareilly and the non-production of the original appointment letters, even when asked for, the said Central Team still went ahead to give a clean chit to the College. "

27. We can also take judicial notice of the fact that many a times the medical colleges and engineering colleges and others are being established after availing large amounts by way of loans from the financial institutions and other borrowings, with no funds of their own, and once the college gets approval and students are admitted, loan availed of is being repaid from the capitation fee charged from the students and ultimately that amount constitute their capital. Many a times, even without any sufficient facilities they put pressure on the various agencies and the Central Government and get approval overlooking the regulatory authority, like MCI, which adversely affects the quality of medical education in this country. For instance, the MCI has taken in the instant case a consistent view and sent negative reports to the Central Government, but overlooking all the reports submitted by the MCI, the Central Government got a report of its own and granted permission vide its letter dated 26.09.2008. CBI in its charge-sheet has categorically and clearly reported that this was done on the basis of bogus, fake and forged records. CBI noticed that the college authorities had produced fabricated and forged documents before the inspection team and the team failed to verify the correctness or otherwise of those documents. CBI investigation has revealed that fraud has been practiced by the Central team as well as the college to get the sanction for the 3rd batch of MBBS students for the academic year 2008-09.

**DUTY OF INSPECTION TEAM:**

28. The Medical Council Act, 1956, especially Section 10A, mandates that when a new medical college is to be established or the number of seats to be increased, the permission of the Central Government is a pre-requisite. Section 19A obliges the MCI to prescribe minimum required standards for medical

A education and the recommendation made by MCI to the Central Government carry considerable weight, it being an Expert Body. MCI had prescribed the regulation – "Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999" which is germane for
B our case, was published in the Gazette of India dated 29.1.2000. In order to verify the minimum requirements, MCI gets the inspection conducted by Inspectors, who are experts, submit their reports on the availability of the staff - teaching and residents - and other infrastructural facilities, clinical availability,
C etc. as per the regulations.

29. We notice, in this case, constantly on all the occasions, the MCI Team decided to recommend to the Central Government not to renew permission for admission of the third batch for the academic year 2008-09. Consistent stand of the
D MCI was communicated to the Central Government on various occasions, but without even ascertaining their view, a Central Team was appointed, got a favourable report and permission was accorded by the Central Government for the year 2008-09, which was the subject matter of CBI investigation.

E

30. We have now to examine the legality of decision of the MCI taken on 13.07.2013 in the light of the above factual and legal scenario. We have already indicated that when sanction was accorded on 20.06.2013 it was categorically stated by the
F MCI that the same was accorded subject to certain conditions. It was stated therein that in case false/wrong declaration or fabricated documents have been used for procuring permission of the Board of Governors of the increased intake and if said misconduct was brought to the notice or comes to the
G knowledge of the MCI, at any stage during the current academic year (2013-14) institution/college would not be liable to be considered for renewal of the permission against increased intake for the next academic year and that renewal of permission against the increased intake for the academic year 2013-14 and for the next academic year and the same would
H be liable to be revoked.

31. Having received the letter of the CBI as well as the charge-sheet the impugned order dated 13.07.2013 was issued by the MCI revoking the letter of permission granted for the academic year 2013-14.

32. We are of the view that the above decision taken by the MCI is in accordance with the Establishment of Medical Colleges Regulation (Amendment 2010 Part II). The above-mentioned Regulation was issued by the MCI in exercise of its powers under Section 33 of the IMC Act, 1956 with the previous sanction of the Central Government. Clause 8.3 of the Regulation deals with the Grant of Permission, sub-clause 8(3)(1)(d) deals with the colleges which are found to have employed teachers with faked/forged documents. Those provisions are extracted herein below:

> "8(3)(1)(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 Government."

33. Learned senior counsel for the petitioner, as already indicated, submitted that only if the Chairman of the College is convicted by a court of competent jurisdiction in a criminal investigation then only the sanction accorded could be revoked. Such an argument was raised relying upon 2013 Regulations,

A which in our view, would not apply to the facts of this case. Regulation 3 of Regulations 2013 reads as follow:

> **"3. Eligibility to make application :** (1) the application for enhance of annual intake capacity in the existing Medical Colleges may be made by the recognizations that have established the Medical College to the Board of Governors in supersession of the Medical Council of India. The format of application for Government and non-governmental owned Medical College is prescribed in Schedule I appended to these Regulations.
>
> (2) Only such existing Medical Colleges shall be eligible to apply under these Regulations that enjoy minimum ten years of standing from the date of grant of initial letter of permission by the Central Government and the MBBS qualification awarded by them stands included in the First Schedule of the Indian Medical Council Act, 1956 (Act No.102 of 1956).
>
> (3) The Medical Colleges with an annual intake of 50 or more but below 100 MBBS seats shall be eligible to apply for enhance for annual intake capacity to 100, as one-time measure.
>
> (4) The Medical Colleges with an annual intake of 100 or more but below 150 MBBS seats shall be eligible to apply for enhancement for annual intake capacity to 150, as one-time measure.
>
> (5) Such Medical Colleges that have not been granted letter of permission by the Board of Governors in Super-session of the Medical Council of India in accordance with clause 8(1)(3)(d) of the Establishment of Medical Colleges Regulations, 1999 (notified in the Official Gazette on 16.04.2010) and/or the person who has established the Medical College has been convicted by a Court of Competent jurisdiction in a criminal investigation initiated

by the Central Bureau of Investigation or Police." A

34. Clause (2) of Regulation 3 clearly states that only such medical colleges shall be eligible under these Regulations that enjoy minimum 10 years of standing from the date of grant of initial letter of permission by the Central Government. So far as the petitioner is concerned, they have completed only eight years, consequently, Regulations 2013 would not apply to them. B

35. The petitioners are governed by Establishment of Medical Colleges Regulations, (Amendment), 2010 (Part II), especially clause 8(3)(1)(d), in the event of which, when MIC finds that the college has employed fake/forged documents for renewal of permission/recognition for processing applications etc., that institute will not be able to be considered for renewal of permission/ recognition for award of MBBS Degree/ processing the application for post-graduate courses for two academic years i.e. that academic year and the next academic year. In this case, CBI letter was received on 11.07.2013 by the MCI and it was placed before the Board of Governors on 12.07.2013 and the revocation order was passed on 13.07.2013 revoking the renewal of permission for the 2nd batch of students against the increased intake from 100 to 150 students for the academic year 2013-14. C D E

36. We are of the considered view that the MCI need not wait till the culmination of the trial initiated on the basis of the charge-sheet filed by the CBI. The investigation by a premier agency like the CBI has prima facie revealed that the college has used fake and forged materials to get sanction for the intake for the year 2008-09, in our view, that is sufficient for the MCI to take action in accordance with the Regulations 8(1)(3)(d) of Regulations 2013. F G

37. We are also not impressed by the argument raised by Mr. Amrendra Sharan, learned senior counsel appearing for the students that they have already joined the course on 10.07.2013. The information brochure issued by the UPCMET refers to two H

important dates. The important dates are the date of results declaration as 15.06.2013 and counseling would start after 15.07.2013. If that be so, we fail to see how students could be admitted on 10.07.2013. Counsel, however, made reference to the newspaper 'Dainik Jagran' where it is indicated that the first counseling would be on July 5, 2013. We cannot give sanctity tc that news items compared to the information brochure published by the U.P. Unaided Medical Colleges Welfare Association for the conduct of UPCMET. Even otherwise, in our view, once the medical council finds that the sanction had been obtained on the basis of fake and forge documents, clause 8(3)(1)(d) kicks in and the fraud unravels everything. We make it clear that the criminal case charge-sheeted by the CBI will, however, be disposed of uninfluenced by observations, if any, made by us in this judgment.

**COURT'S CONCERN**

38. We think, this is an apt occasion to ponder over whether we have achieved the desired goals, eloquently highlighted by the Constitution Bench judgments of this Court in *T.M.A. Pai Foundation and others v. State of Karnataka and others* (2002) 8 SCC 481 and *P.A. Inamdar and others v. State of Maharashtra and others* (2005) 6 SCC 537. TMA Pai Foundation case (supra) has stated that there is nothing wrong if the entrance test being held by self financial institutions or by a group of institutions but the entrance test they conduct should satisfy the triple test of being fair, transparent and not exploitative. *TMA Pai Foundation* (supra) and *Inamdar* (supra) repeatedly stated that the object of establishing an educational institution is not to make profit and imparting education is charitable in nature. Court has repeatedly said that the common entrance test conducted by private educational institutions must be one enjoined to ensure the fulfillment of twin object of transparency and merits and no capitation fee be charged and there should not be profiteering. Facts, however, give contrary picture. In Inamdar, this Court, in categorical terms, has

declared that no capitation fee be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee.

39. The CBI's investigation, however, reveals a sorry state of affairs, which is an eye-opener for taking appropriate remedial measures in future so that medical education may attain the goals envisaged by the IMC Act and the Regulations and serve the community. CBI had to charge-sheet none other than the then Union Minister of Health and Family Welfare, itself which depict how the educational system in this country is deteriorating. Many of regulatory bodies like MCI, AICTE, UGC etc. were also under serious clout in the recent years. CBI, in the year 2010, had to arrest the President of the MCI for accepting bribe to grant recognition to one Medical College in Punjab. Later, it is reported that the CBI found that the President of the MCI and its family members possessed disproportionate assets worth of 24 crores. We have referred to these instances only to indicate the falling standards of our educational system at the highest level, sometime even at the level of the Central Government making a serious inroad to the right to life guaranteed to the citizens of the country under Article 21 of the Constitution of India.

40. Mushrooming of large number of medical, engineering, nursing and pharmaceutical colleges, which has definitely affected the quality of education in this country, especially in the medical field which call for serious introspection. Private medical educational institutions are always demanding more number of seats in their colleges even though many of them have no sufficient infrastructural facilities, clinical materials, faculty members, etc. Reports appear in every now and then that many of the private institutions which are conducting medical colleges are demanding lakhs and sometimes crores of rupees for MBBS and for post-graduate admission in their respective colleges. Recently, it is reported that few MBBS seats were sold in private colleges of Chennai. We cannot lose sight of the fact that these things are happening in our country irrespective of

A the constitutional pronouncements by this Court in TMA Pai Foundation that there shall not be any profiteering or acceptance of capitation fee etc. Central Government, Ministry of Health and Family Welfare, Central Bureau of Investigation or the Intelligence Wing have to take effective steps to undo B such unethical practices or else self-financing institutions will turn to be students financing institutions.

41. We notice that the current policy of the Central Government in the higher education is to provide autonomy of institutions, but adoption of unfair practices is a serious violation C of the law. Few States, like Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra, Kerala, Delhi etc. have passed some legislation to prohibit demand/collection of capitation fee which have no teeth, the institutions who indulges in such practices can get away by paying some fine, which is meager.

D

42. We, therefore, emphasise the extreme necessity of a Parliamentary Legislation for curbing these unfair practices, which is the demand of our society. "The Prohibition of Unfair Practices in Technical Educational Institutions, Medical E Educational Institutions and University Bill, 2010" has already been presented to both the Houses of Parliament. It is reported that the States have welcomed such a legislation, but no further follow up action has been taken. We are confident, earnest efforts would be made to bring in proper legislation, so that F unethical and unfair practices prevalent in higher technical and medical institutions can be effectively curbed in the larger public interest.

43. We, therefore, find no good reason to invoke Article 32 of the Constitution of India and none of the fundamental G rights guaranteed to the petitioners stand violated. The Petition, therefore, lacks merits and is dismissed.

R.P. Writ Petition dismissed.