

IQ CITY FOUNDATION & ANR.

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v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 502 of 2017)

AUGUST 01, 2017

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**[DIPAK MISRA, AMITAVA ROY AND
A. M. KHANWILKAR, JJ.]**

Education/Educational Institutions:

Medical College – Applied for renewal of permission for its 5th batch of MBBS course for academic year 2017-18 – The Assessors after inspection of the institution found certain deficiencies – Medical Council of India (MCI) after considering the Assessment Report recommended to the Central Government not to renew the permission – However, the Hearing Committee of Central Government opined that the nature of deficiencies were not such as to warrant disapproval – Central Government instead of taking final decision referred the matter back to MCI to review the same in the light of recommendation of Hearing Committee – MCI constituted a team to carry out a Compliance Verification Assessment – The team conducted a regular inspection rather than limiting their scope of reviewing to the compliance of the observations of the Hearing Committee – Team noted certain deficiencies in their Compliance Verification – MCI again recommended disapproval – Central Government by impugned order dated 31.05.2017 rejected the scheme of permission of renewal – Petitioner-College challenged the order u/Art. 32 of the Constitution – Held: In view of s. 10-A of Medical Council Act and Regulations and Rules framed thereunder, power of MCI cannot be restricted, by laying down as an absolute principle that if matter is sent back by Central Government for Compliance Verification, the assessors inspection is limited only to verification of mentioned items and they cannot perceive other deficiencies – The direction of Central Government for Compliance Verification should not be construed as a limited remand – The order of Central Government was not a reasoned one – It was obligatory on its part to ascribe reasons – Central Government is directed to afford a further opportunity of hearing to the petitioner-college –

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A *Medical Council Act, 1956 – s. 10-A.*

Issuing directions to Central Government, the Court

B HELD: 1. On a reading of Section 10-A of the Medical Council Act, 1956, Rules and the Regulations framed thereunder, 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. 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, is not attracted. [Para 29][322-D-F]

D 2. The real compliant institutions should not always be kept under the sword of Damocles. Stability can be brought by affirmative role played by the Central Government. And the stability and objectivity would be perceptible if reasons are ascribed while expressing a view and absence of reasons makes the decision sensitively susceptible. [Para 29][322-G]

E 3. The petitioners have been running the College since 2013-14. Students who have been continuing their education shall continue for 2017-18. The order of the Central Government is not a reasoned one. It is obligatory on its part to ascribe reasons. For the said purpose, Central Government to afford a further opportunity of hearing to the petitioners and also take the assistance of the newly constituted Oversight Committee. [Para 30][322-H; 323-A-B]

G *Manohar Lal Sharma v. Medical Council of India and Ors.* (2013) 10 SCC 60 : [2013] 9 SCR 325; *Royal Medical Trust (Registered) and Anr. v. Union of India and Anr.* (2015) 10 SCC 19 – relied on.

H *Dr. Ashish Ranjan and Ors. v. Union of India & Ors.* (2016) 11 SCC 225; *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and Ors.*

(2016) 11 SCC 530 : [2016] 4 SCR 403 – referred to. A

Case Law Reference

(2016) 11 SCC 225	referred to	Para 7	
[2013] 9 SCR 325	relied on	Para 19	
[2016] 4 SCR 403	referred to	Para 21	B
(2015) 10 SCC 19	relied on	Para 28	

CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 502 of 2017.

Under Article 32 of the Constitution of India. C

Salman Khurshid, S. G. Hasnain, Gurukrishna Kumar, A. Sharan, P. S. Patwalia, Kapil Sibal, V. Giri, Nidhesh Gupta, R. Basant, Amit Sibal, Raju Ramachandran, Sanjay R. Hegde, Dr. Rajeev Dhawan, Mukul Rohatgi, Shyam Divan, C. A. Sundaram, Sr. Advs., S. P. Singh, Mohd. Zahid Hussain, Ms. Kamna Singh, Ms. Kanika, Ms. Lubna Naaz, Kamal Mohan Gupta, Anshul Narayan, Amit Kumar, Atul Kumar, Avijit Mani Tripathi, Sharya Sahay, Ms. Rekha Bakshi, Kumar Abhishek, Ms. Vidisha Kumar, A. Ramesh, Syed Ahmad Naqvi, Shauryy Sahaye, Ms. Rekha Sahaye, Ms. Shilpi Gupta, Amitabh Sinha, Vivek Singh, G. Umopathy, Rakesh K. Sharma, Alco G. Rozario, Aditya Singh, S. Udaya Kumar Sagar, Ms. Bina Madhavan, Ms. Akanksha Mehra (For M/s. Lawyer S Knit & Co.), Ranjan Kumar Pandey, K. P. Gautam, Sandeep Bisht, Anshumaan B., Shrey Vardhan, Ranjeeta Rohatgi, Girijapati Kaushal, Mritunjay Kumar Sinha, Kunal Vajani, Pranaya Goyal, Nikhil Ranjan, Chiranjivi Sharma, Abirath Thakur, Saket Sikri, Vikaalp Mudgal, Gopal Sankarnarayanan, V. Shyamohan, Surya Prakash, Ehsan Javaid, Pankaj Pandey, Amitesh Kumar, Shashank S. Singh, Ms. Babita Kushwaha, Ms. Priti Kumari, M. K. Sinha, Advs. for the Petitioners. D E F

Maninder Singh, ASG, Vikas Singh, Ajit Kumar Sinha, Ms. Meenakshi Arora, Sr. Advs., Gaurav Sharma, Ms. Amandeep Kaur, Prateek Bhatia, Dhawal Mohan, Ms. Vara Gaur, Ms. Vriti Jindal, R. Balasubramanian, Prabhas Bajaj, Akshay Amritanshu, Sanjai Kumar Pathak, Joheb Hussain, Ms. Binu Tamta, Dipak Goel, R. K. Rathore, Vibhu Shankar Mishra, G. S. Makker, Mishra Saurabh, T. Singh Dev, Ankit Lal, Arun Batra, Tanuj Bagga, Advs. for the Respondents. G

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A The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. In this Writ Petition preferred under Article 32 of the Constitution of India the petitioners have prayed for issue of a writ of certiorari for quashment of the order dated 31.05.2017 passed under Section 10-A of the Indian Medical Council Act, 1956 (for brevity, 'the Act') by the Secretary, Ministry of Health and Family Welfare, the 1st respondent herein, and further issue a direction to the said respondent to grant permission to the petitioner College for 4th renewal for the academic year 2017-2018 to facilitate admission of the 5th batch (150 students) MBBS Course.

C 2. The expose' of facts essential for adjudication of the controversy are that IQ City Medical College attached to the teaching hospital, namely, IQ City Narayana Multispecialty Hospital was established in the year 2013 by the petitioners with an intake of 150 (one hundred and fifty) seats MBBS Course. The Medical Council of India (MCI) conducted an inspection and granted the Letter of Permission (LOP) on 15.07.2013
D for the establishment of the new medical college at Burdwan, West Bengal with an annual intake of 150 students with effect from the academic year 2013-14. Vide letters dated 04.07.2014, 10.06.2015 and 15.12.2015 renewals of permission for the 2nd (1st renewal), 3rd (2nd renewal) and 4th (3rd renewal) batches of MBBS students at the petitioner
E College for the academic years 2014-15, 2015-16 and 2016-17 respectively were granted by the respondent No. 1. On 06.07.2016, petitioner-College submitted its scheme along with the requisite fees for the 4th renewal for the academic year 2017-18 which pertains to admission of the 5th batch of 150 students in MBBS course. On 09.07.2016, the 2nd respondent informed the College that the assessment for renewal of
F permission for the academic year 2017-18 would be undertaken by the Assessors appointed by it at any time after 15.07.2016 and the petitioners were asked to fill in the Standard Inspection Form A, Form B and Declaration Form for the academic year 2017-18 and keep them ready for scrutiny at the time of assessment. There was also a direction for submission of the soft copies of the said Forms. As averred, the petitioners
G duly submitted a compact disc containing soft copies of Form A, Form B and Declaration Form and upon receipt of the necessary documents, the 2nd respondent constituted a team of Assessors and directed them to carry out the assessment inspection of the College. The inspection team, that is, the Assessors, conducted a surprise inspection of the College on
H 03.11.2016 and 04.11.2016. The Assessors pointed out certain deficiencies

to the College and noted the same in the assessment report dated 04.11.2016. It is put forth in the Regular Inspection Report that the shortfall in Teaching Faculty and Resident Doctors were only 4.5% and 3.50% respectively which were well within the prescribed limit. Two other deficiencies that were pointed out, as asserted, were completely remediable and were duly remedied by the College. On 22.12.2016 the Executive Committee of the respondent No. 2 considered the Assessment Report of the Assessors and decided to recommend to the respondent No. 1 not to renew the permission to the College for the 4th renewal for the academic year 2017-18. A B

3. As further set forth, the 1st respondent by its letter dated 03.02.2017 communicated to the College the recommendation dated 28.01.2017 of the respondent No. 2 for disapproving the permission to the College for the 4th renewal for the academic year 2017-18 and called upon the College to submit a detailed point-wise compliance with documentary evidence. The College was further intimated about the hearing that was to be held on 09.02.2017 before the Hearing Committee. A team of representatives of the College appeared before the Hearing Committee on the date fixed and submitted the compliance report of the remarks and observations made by the Assessors of the respondent No. 2. In the second week of March, 2017, the petitioners received a copy of order dated 01.03.2017 issued by the 1st respondent recording the recommendations/order passed by the Hearing Committee of the respondent No. 1 under Section 10-A(4) of the Act. The recommendation of the Hearing Committee was to the effect that the deficiencies pointed out by the 2nd respondent were not such to warrant disapproval at that stage. Despite the aforesaid findings of the Hearing Committee, the 1st respondent, instead of taking a final decision, referred the matter back to the respondent No. 2 to review the same in the light of the recommendations/ findings of the Hearing Committee alongwith documents submitted by the petitioners and to furnish its recommendation. C D E F

4. On receipt of the said communication, the 2nd respondent on 17.03.2017 constituted a team to carry out a Compliance Verification Assessment of the College. The team of Assessors instead of carrying out a compliance verification, on 21.03.2017 conducted a regular inspection in a random manner and instead of limiting to their scope of reviewing the compliance of the remarks/observations of the Hearing Committee proceeded to make a different kind of assessment. G

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A 5. It is contended that though the Compliance Inspection Report
 was submitted, the Assessors required the College to submit a
 representation and accordingly, the College submitted the necessary
 representation to the respondent No. 2. The Assessors, as per the stand
 of the petitioners, noted certain deficiencies in their Compliance
 B Verification. Executive Committee of the respondent No. 2 held its
 meeting on 28.04.2017 but Minutes of the meeting were not uploaded on
 the official website of the respondent No. 2 until 29.05.2017 and were
 not communicated to the petitioners.

C 6. It is the stand of the petitioners that on 20.05.2017, the petitioners
 approached the 1st respondent and submitted a detailed representation
 on that day with regard to Compliance Verification and deficiencies found
 by the Assessors appointed by the respondent No. 2. The 1st respondent,
 by the impugned order dated 31.05.2017, accepted the recommendation
 of the 2nd respondent and rejected the scheme of permission of renewal
 for the 4th renewal (admission of the 5th batch, 150 student) MBBS
 D Course for the academic year 2017-18. It is alleged that the order dated
 31.05.2017 was communicated to the College on 30.06.2017.

E 7. A counter affidavit has been filed by MCI contending, *inter*
alia, that if the permission is granted after 31.05.2017 it has to be for the
 subsequent academic year as per order passed by the Court in *Dr. Ashish*
*Ranjan and others v. Union of India & others*¹ and subsequent orders
 passed in the said case. The Hearing Committee, according to MCI,
 was constituted by the Central Government and its members were
 eminent personalities and considering the report of Assessors, LOP for
 the academic year 2017-18 has been denied. The stand that the renewal
 has been illegally rejected is not correct as there are gross deficiencies.
 F It is the stand of the MCI that question of “open remand” and “limited
 remand” does not arise. Once an inspection is conducted by the
 Assessors, it has to be done wholly and appropriately so that the standard
 of an institution that imparts medical education is maintained and the
 said standard is non-variable. The stand that the Assessors report dated
 21.03.2017 pointed out certain deficiencies which were not mentioned
 G in the previous assessment report dated 04.11.2016 is neither acceptable
 nor tenable, for the reason it is the solemn duty of the Assessors to
 ensure that there is no deficiency in the medical college and they cannot
 ignore the deficiencies and, therefore, the plea that it exceeded the mandate
 is not only mercurial but wholly inconceivable.

H ¹ (2016) 11 SCC 225

8. We have heard Mr. Mukul Rohatgi, learned senior counsel for the petitioners, Mr. Maninder Singh, learned Additional Solicitor General for the Union of India and Mr. Vikas Singh, learned senior counsel for the MCI. A

9. It is submitted by Mr. Rohatgi, learned senior counsel for the petitioners that the 1st respondent could not have sent back the matter to the MCI as it was obligatory on its part to take the final decision and further, it should not have agreed with the opinion of the Executive Committee, as the Assessors transgressed the order of remand. That apart, submits Mr. Rohatgi, there was no justification to take a decision on the last date, that is, 31.05.2017. B

10. Mr. Singh, learned senior counsel appearing for the MCI, referring to Section 10-A of the Act submits that an institution has to maintain consistency in imparting education and where major deficiencies are distinctly evident during compliance verification, an institution cannot be allowed to lean upon the earlier assessment report. According to Mr. Singh, institution has to remain ever compliant and it cannot be in an oscillating position. According to him, one day it can have faculty members and remain dutiful to the statute and another day in total disregard play truant with the provision, for such a situation would crucify the sanctity of the medical education. C

11. To have a complete projection of the factual matrix, we think it necessary to refer to the opinion of the Executive Committee recorded on 22.12.2016 on the Regular Verification. The said report reads as follows: D

“46. Renewal of permission for MBBS course for 5th batch (150 students) IQ City Medical College, Burdwan, West Bengal under West Bengal University of Health Sciences, Kolkata u/s 10A of the IMC Act, 1956 for the academic year 2017-18. E

Read: the matter with regard to renewal of permission for MBBS course for 5th batch (150 seats) of IQ City Medical College, Burdwan, West Bengal under West Bengal under West Bengal University of Health Sciences, Kolkata u/s 10A of the IMC Act, 1956 for the academic year 2017-18. F

The Executive Committee of the Council considered the assessment report (3rd and 4th November, 2016) and noted the following:- G

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- A 1. Although the number of patients admitted amounted to the bed occupancy of 80% but on actual verification most admissions were found to be fresh and new.
2. Central Library: It is not air-conditioned. Reading room for Residents is not available.
- B 3. Students' Hostel: In Boys' hostel, Visitors' room A.C. study room with Computer & Internet, Recreation room are not available. Hygiene in Girls' is very poor.
4. Residents' Hostel: Available accommodation is 48 against requirement of 85.
- C 5. Anatomy department: Available mounted specimens are 45.
6. Pharmacology department: In 1 Demonstration room, there are only 15 chairs with tables.
7. RHTC: Residential accommodation is not available.
- D 8. Other deficiencies as pointed out in the assessment report.

In view of above, the Executive Committee of the Council decided to recommend to the Central Govt. not to renew the permission for admission of 5th batch of 150 MBBS students at IQ City Medical College, Burdwan, West Bengal under West Bengal under West Bengal University of Health Sciences, Kolkata u/s 10A of the IMC Act, 1956 for the academic year 2017-18."

12. After receipt of the report of the Executive Committee, the 1st respondent vide communication dated 03.02.2017 enclosing thereto the letter dated 28.01.2017 of respondent No. 2, intimated the College that:

"Subject: Renewal of Permission for admission of 5th batch of 150 MBBS students for the academic session 2017-18 – Hearing to the applicant u/s 10A(4) of IMC, 1956 – reg.

Sir/Madam

I am directed to forward herewith a copy of MCI's letter dated 28.01.2017 recommending disapproval in respect of renewal permission at your College for the academic session 2017-18.

2. In pursuance to the provisions contained in Section 10A(4) of IMC Act, 1956, it has been decided to grant you hearing on 09.02.2017 at 10:30 AM by the Committee constituted by this

Ministry for this purpose in Room No. 243, A-Wing, Nirman Bhawan, Maulana Azad Road, New Delhi. A

3. You are requested to appear in person or depute an authorized representative to present the case of your Trust/Society vis-à-vis the disapproval letter of the MCI alongwith the requisite information in the enclosed format on the specified date & time failing which the scheme will be decided ex-parte. You are also requested to bring two hard copies and one softcopy of the information/material you propose to present before the committee in the attached format in MS Word. You are also requested to send a letter of confirmation of participation by e-mail sujeet.charan@nic.in.” B

13. In pursuance of the communication made by the 1st respondent, a team of representatives of the petitioner College appeared before the Hearing Committee on 09.02.2017 and clarified point-wise compliance of the remarks/observations made by the Assessors and produced documentary evidence in that regard. In the second week of March, 2017, as stated earlier, the petitioners received the letter dated 01.03.2017 issued by the 1st respondent recording the recommendations/orders passed by the Hearing Committee. Relevant extract of the communication containing the recommendations of the Hearing Committee is reproduced below: C

<p>“IQ City Medical College, Burwan, West Bengal, [Renewal of Permission of 5th Batch (150 seats)]</p>	<p>There is no deficiency of faculty, residents and clinical material.</p> <p>Photographic evidence submitted by the college suggests that the deficiencies relating to air-conditioning in Central library / student’s hostel, resident hostel/RHTC accommodation and specimen have been rectified.</p> <p>The deficiencies are not such to warrant disapproval at this stage of college.”</p>
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A 14. Though the Hearing Committee had sent the aforesaid recommendation, yet the 1st respondent thought it appropriate to refer the matter back to MCI and the manner of reference is as follows:

B	"4.	IQ City Medical College, Burdwan, West Bengal Renewal of Permission of 5 th batch (150 seats)	There is no deficiency of faculty, residents and clinical material. Photographic evidence submitted by the college suggests that the deficiencies relating to air-conditioning in Central library/ student's hostel, resident hostel / RHTC accommodation and specimens have been rectified. The deficiencies are not such to warrant disapproval at this stage of college.
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2. In view of the above, MCI is requested to review the above schemes in light of the recommendations of Hearing Committee alongwith documents submitted by the applicant Colleges and furnish its recommendation accordingly to this Ministry. The compliance submitted by the applicant College are enclosed herewith in original."

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15. It needs to be clarified that the communication also referred to some other colleges but we are only concerned with the petitioner College for which we have reproduced the relevant extract.

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16. The team of Assessors who went for compliance verification conducted a surprise verification on 21.03.2017 and noted certain deficiencies to which we shall refer to at a later stage.

17. After receipt of the said report, the 1st respondent on 31.05.2017 accepted the Report of the MCI and denied LOP for the academic year 2017-18. It is the stand of the petitioners that the said letter was received on 21.06.2017. Whether letter was received on that day or not is not relevant in praesenti. What is pertinent is to appreciate the communication dated 31.05.2017. It reads as follows:

“To,
The Principal/Dean,
IQ City Medical College,
Savapur, Bijra Road, Jemua, Durgapur,
West Bengal- 713206

Subject: Renewal of permission for MBBS course for 5th Batch of 150 students at IQ City Medical College, Burdwan, West Bengal for the academic session 2017-18 u/s 10A of IMC Act, 1956 – reg.

Ref No. 12012/127/2016-ME.I(FTS.3084749) dated 31st May, 2017.

Sir,

Drawing reference to the above subject you are directed to submit a present status report of the deficiencies and recommendation of Medical Council of India that were not complied by your Institute and for which the Central Government has directed you NOT to admit any students in MBBS course for academic year 2017-18.

You are further directed to submit Action Taken Report in this regard immediately.”

18. In *Dr. Ashish Ranjan and others (supra)*, the Court, dealing with establishment of medical college, has stated thus:

“2. In the “Establishment of Medical College Regulations, 1999”, in “SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA” the following shall be substituted as under:

A TIME SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES/ RENEWAL OF PERMISSION AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

B	Sl. Nos.	Stage of processing	Last Date
	1.	Receipt of applications by the Central Government	Between 15 th June to 7 th July (both days inclusive) of any year
C	2.	Forwarding application by the Central Government to the Medical Council of India	By 15 th July
D	3.	Technical scrutiny, assessment and recommendations for letter of permission by the Medical Council of India	By 15 th December
E	4.	Receipt of reply/ compliance from the applicant by the Central Government and for personal hearing thereto, if any, and forwarding of compliance by the Central Government to the Medical Council of India	Two months from receipt of recommendation from MCI but not beyond 31 st January
F	5.	Final recommendations for the letter of permission by the Medical Council of India	By 30 th April
G	6.	Issue of letter of permission by the Central Government	By 31 st May

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Note 1.- In case of renewal of permission, the applicants shall submit the application to the Medical Council of India by 15th July.” A

19. In *Manohar Lal Sharma v. Medical Council of India and others*², it has been held:

“19. MCI on the basis of the reports, regular and 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.” B C

20. Thereafter, the Court referred to Section 10-A of the Act and the Establishment of Medical College Regulations, 1999 framed thereunder and ruled:

“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.” D E

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.” F G

² (2013) 10 SCC 60

A 21. In *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others*³, the Court rejected the stand of the respondents therein. It observed:

B “24. Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of MCI, etc. Under no circumstance should the High Court examine the report as an appellate body — this is simply not the function of the High Court. In the present case there was no ground made out at law for setting aside the report of the Inspection Team.

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D 26. It appears to us that both MCI and the Central Government each having twice considered the inspection report submitted by neutral Medical Professors, with the Central Government having given a personal hearing to KIMS on the second occasion (and perhaps on the first occasion as well) the matter ought to have been given a quietus by the High Court at least for the academic year 2015-2016.”

E 22. Be it noted, in the said case, the two-Judge Bench took note of the status of the Assessors and echoed the note that was sounded in *Manohar Lal Sharma* (supra) which we think it apt to reproduce:

F “6. Our attention was also drawn to the decision of this Court in *Manohar Lal Sharma v. Medical Council of India* (supra) wherein it was held 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.”

G 23. In the case at hand, what is urged by Mr. Rohatgi, learned senior counsel appearing for the petitioners, is that Assessors travelled beyond the order of remand and that singularly makes the inspection

H ³ (2016) 11 SCC 530

perverse and thereby vulnerable. At this juncture, it is seemly to refer A
the remarks of the Assessors which relate to the following aspects:

“a. Deficiency of faculty is 15.90% as detailed in the report.

b. Shortage of Residents is 25.88% as detailed in the report.

c. On the day of inspection the number shown is not tallying with B
number actually present in the hospital. At random verification at
3, OPD registration counters at 12.45 pm, is only 110 (40,30 and
40 new patients). Many patients in the ward are admitted with
minor complaints like cough, cold, itching, and the case sheets are
not filled up, the bed occupancy is not tallying with number
submitted. C

d. Students' Hostels: In Boys' hostel, Visitors' room, A.C. Study
room with Computer & Internet, Recreation room are not available.

e. In Anatomy department, some specimens are not mounted but
kept in buckets.” D

24. It has also found certain other deficiencies with regard to
casualty attendance, operating work, etc. The College has replied to the
same which is as follows:

“In connection with the above subject I would like to submit the
following paragraph for your kind consideration. E

1. That during the last MCI inspection held on 3rd and 4th Nov
2016 our Faculty & Resident deficiency was 2.18 and 3.38
respectively. However on 21.03.2017 surprise inspection and due
to their personal commitment they could not come by 11 AM and
could not appear before the assessors. F

2. Secondly, the State NEET Post Graduate counseling and the
Diplomat in National Board (DNB) counseling in process, many
of the senior and Junior Residents and few faculty members had
gone to KOLKATA for their counseling hence were not able to
appear in the inspection conducted on 21.03.2017. G

3. Thirdly most of these faculties and residents are working with
us since long time and kind of documentary proof for the same
can be submitted, but because of the counseling they were unable
to make it. H

A 4. It will not be out of place to mention here that our faculties and residents had gone to attend medical camps in suburban areas as such they could not reach by 11 AM to appear before the assessors.

Hence their absence may kindly be considered to offset the faculty and resident deficiency.”

B 25. As the facts have unrolled, there is no dispute that the petitioner College had submitted a scheme for 2017-18 for intake of 150 candidates. There is also no controversy that there was an inspection and the Hearing Committee had given certain recommendations and the Central Government thought it appropriate to send it back to the MCI for the compliance verification report. Section 10-A of the Act deals with permission for establishment of new medical college, new course of study, etc. and sub-section (7) thereof deals with as to what steps have to be taken by MCI while making its recommendation to the Central Government either approving or disapproving. Sub-section (7) reads as follows:

D **“10-A. Permission for establishment of new medical college, new course of study, etc.—(1)-(6) * * ***

E (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—

F (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.

G (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;

H (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; A

(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; B

(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; C

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

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

26. In *Manohar Lal Sharma* (supra), the Court has referred to Indian Medical Council (Amendment) Act, 2010 which confers powers on the Board of Governors as per Section 3-B(b). The said provision reads thus: D

“3-B. *Certain modifications of the Act.*—During the period when the Council stands superseded— E

* * *

(b) The Board of Governors shall—

(i) exercise the powers and discharge the functions of the Council under this Act and for this purpose, the provisions of this Act shall have effect subject to the modification that references therein to the Council shall be construed as references to the Board of Governors; F

(ii) grant independently permission for establishment of new medical colleges or opening a new or higher course of study or training or increase in admission capacity in any course of study or training referred to in Section 10A or giving the person or college concerned a reasonable opportunity of being heard as provided under Section 10A without prior permission of the Central G

A Government under that section, including exercise of the power to finally approve or disapprove the same: and
 (iii) dispose of the matters pending with the Central Government under Section 10A upon receipt of the same from it.”

27. Interpreting Section 3-B(b), the Court held thus:

B “22. MCI, with the previous sanction by the Central Government, in exercise of its powers conferred by Sections 10-A and 33 of the Indian Medical Council Act, 1956, made the Regulations known as the Establishment of Medical College Regulations, 1999. Regulation 8 of the 1999 Regulations deals with grant of permission for establishment of new college. Application/ Scheme submitted by the applicants is evaluated and the verification takes place by conducting physical inspection by the team of inspectors of MCI. The Board of Governors may grant LoP to the applicant for making admissions in the first year of MBBS course in the medical college and the permission is renewed every year subject to the college achieving the yearly target mentioned in “Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999”. Schedule I of the abovementioned Regulation provides for accommodation in the medical college and its teaching hospital. Schedule II deals with equipment required for various departments in the college and hospital. The requirements are statutorily prescribed and, therefore, the Board of Governors has no power to dilute the statutory requirements mentioned in the abovementioned Regulations.”

F 28. At this stage, we may usefully refer to the directions enumerated in *Royal Medical Trust (Registered) and another v. Union of India and another*⁴, wherein a three-Judge Bench was dealing with justifiability of the communications issued by the Central Government recommending disapproval of applications preferred in respect of Medical Colleges of the applicants for the academic year 2014-15. The Court, referring to Section 10-A of the Act and the Regulations framed by the MCI and further advertent to various aspects, ruled:

“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

H ⁴ (2015) 10 SCC 19

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.

A (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.
 B In cases where actual physical verification is required, MCI and
 the Central Government must cause such verification before the
 deadline.

C (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.” [Emphasis added]

29. 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
 D 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.
 E 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. Be it clearly stated, the said
 principle also does not flow from the authority in *Royal Medical Trust*
 F (supra). In this context, the objectivity of the Hearing Committee and
 the role of the Central Government assume great significance. The real
 compliant institutions should not always be kept under the sword of
 Damocles. Stability can be brought by affirmative role played by the
 Central Government. And the stability and objectivity would be perceptible
 G if reasons are ascribed while expressing a view and absence of reasons
 makes the decision sensitively susceptible.

30. Having said this, we are not inclined to close the matter. The
 petitioners have been running the College since 2013-14. We have been
 apprised that students who have been continuing their education shall
 H continue for 2017-18. As we find the order of the Central Government is

not a reasoned one. It is obligatory on its part to ascribe reasons. For the said purpose, we would like the Central Government to afford a further opportunity of hearing to the petitioners and also take the assistance of the newly constituted Oversight Committee as per the order dated July 18, 2017 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* and thereafter take a decision within two weeks. Needless to say, the decision shall contain reasons. We repeat at the cost of repetition that the decision must be an informed one.

31. Before parting with the case for the present, it is warrantable to state that “health”, a six letter word, when appositely spelt and pronounced, makes the body and mind holistic and an individual feels victorious. Apart from habit and nature, some external aid is necessary. And that is why, it is essential to have institutions which are worthy to impart medical education so that the society has not only qualified doctors but doctors with impeccable and sensitive qualities. A lapse has the potentiality to invite a calamity. Not for nothing, Hippocrates had said, “A wise man ought to realize that health is his most valuable possession.” Therefore, the emphasis is on the compliant institutions that can really educate doctors by imparting quality education so that they will have the inherent as well as cultivated attributes of excellence.

32. List the matter on 24th August, 2017 awaiting the decision of the Central Government.