

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 23.09.2011

Judgment delivered on: 28.09.2011

W.P.(C) No. 5763/2011 & CM No.11723/2011

TEERTHANKER MAHAVEER INSTITUTE OF MANAGEMENT Petitioner

Through: Mr.Maninder Singh, Sr. Advocate with
Mr.Gaurav Sharma, Advocate.

Vs.

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.B.V.Niren, CGSC with Mr.Utkarsh Sharma,
Advocate for Respondent No.1.
Mr.Nidesh Gupta, Sr.Advocate with Mr.Ashish
Kumar and Mr.Jawahar Narang, Adv. for MCI.

2. **W.P.(C) No. 5917/2011 & CM No.11971/2011**

RAMA MEDICAL COLLEGE HOSPITAL & RESEARCH CENTRE, KANPUR
.....Petitioner

Through: Mr.Neeraj Shekhar with Ms.Ayushi &
Mr.Ashutosh Thakur, Advocates.

Vs.

UNION OF INDIA & ANR.

.....Respondents

Through: Mr. Ravinder Aggarwal, Adv. for respondent
No.1.
Mr.Nidesh Gupta, Sr.Advocate with Mr.Ashish
Kumar and Mr.Jawahar Narang, Adv. for MCI.

3. **W.P.(C) No. 4920/2011 & CM No.9982/2011**

SCHOOL OF MEDICAL SCIENCE & RESEARCH, SHARDA UNIVERSITY
.....Petitioner

Through: Mr.J.P.Sengh, Sr. Advocate with Mr.Ranjan K.Pandey & Mr.Kaushal P.Gautam, Advocates for petitioner with Mr.Sanjay Kumar Pandey, Deputy Registrar (Legal).
Mr.Gaurav Sharma, Advocate.

Vs.

UNION OF INDIA & ORS. Respondents

Through: Mr.B.V.Niren, CGSC with Mr.Utkarsh Sharma, Advocate for Respondent No.1.
Mr.Nidesh Gupta, Sr.Advocate with Mr.Ashish Kumar and Mr.Jawahar Narang, Adv. for MCI.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may | Yes |
| be allowed to see the judgment? | |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported | Yes |
| in the Digest? | |

KAILASH GAMBHIR, J.

1. This order shall dispose of a batch of three writ petitions bearing W.P.(C) Nos. 5763/2011, 5917/2011 and W.P.(C) No. 4920/2011 .

2. By these petitions filed under Article 226 of the Constitution of India, the petitioner institutes/medical colleges have approached this court to challenge the order of the respondent Medical Council of India/Board of Governors whereby it has rejected the grant of additional intake in the MBBS course in the petitioner institutes/colleges.

3. The adumbrated facts of the three petitions are set out as under:

W.P.(C) Nos. 5763/2011

4. The petitioner herein applied initially for intake of 150 students in MBBS course but subsequently requested the respondent to inspect the college for 100 admissions only and thus consequently the respondent granted permission for starting the medical college for 100 students and the subsequent renewals followed. It is only when the petitioner applied for permission of 150 students for the session 2011-2012, that the respondent granted renewal for 100 students only vide letter dated 8.6.2011 and therefore feeling aggrieved with the said act of non grant of permission and

the non communication of the same, the petitioner has preferred the present petition.

W.P.(C) No. 5917/2011

5. The petitioner college herein was granted permission for running a medical college with 100 intake for MBBS course and was granted subsequent annual renewals for 100 admissions as well. It is only when the petitioner applied for the additional intake of 150 for the academic session of 2011-2012 alongwith with the fourth annual renewal, that the said request of the petitioner was rejected vide letter dated 6.5.2011 on the ground of infrastructural deficiencies. The petitioner through various letters applied to the respondent for reconsideration of its application for additional intake and it is then that vide impugned letter dated 30.6.2011 that the respondent rejected the application of the petitioner based on the regulations stating that the petitioner college is not eligible for grant of additional intake. Feeling aggrieved with the same, the petitioner has approached this court.

W.P.(C) No. 4920/2011

6. The petitioner herein applied for annual intake of 150 students at the time of its establishment but after inspection was granted the permission for intake of 100 students only. It is thereafter that for the academic session 2010-11, that the petitioner applied for additional intake

of 150 but was granted renewal for 100 admissions only. Again, for the academic year 2011-2012 the petitioner reapplied for 150 annual intake but was found deficient in certain areas and after complying with the same, another inspection was carried out in which the petitioner college was found fit for the intake of 150 students but surprisingly vide impugned order dated 30.6.2011, was granted renewal for 100 admissions only thus arbitrarily denying the additional intake of 150 to the petitioner and feeling aggrieved with the same, the petitioner has preferred the present petition.

7. Mr. Maninder Singh, learned Senior Advocate appearing for petitioner in W.P.(C) No. 5768/2011 submitted that vide letter dated 28.2.2011, the request for inspection of 150 admissions for 2011-2012 was made by the petitioner to the Board of Governors and vide assessment report dated 16.5.2011 (at page 90 of the paper book), the counsel pointed out that the inspection has been carried out for 150 admissions and hence the petitioner college has infrastructure in place for admitting 150 students as no deficiency was found in the said assessment report and in the remarks against various columns in the assessment report but despite having the requisite infrastructure in place, the college has not been given approval for additional intake of 150 students.

8. Referring to the impugned order dated 8.6.2011, the petitioner pointed out that no ground for not granting additional intake of 150 students has been given in the said impugned order, as the impugned order only mentions that the Board of Governors has granted permission for admission of 4th Batch of 100 MBBS students only. The contention of the counsel for the petitioner was that the reasons of arriving at a decision by a statutory authority whether in favour or against, cannot be added by subsequent affidavits as per the mandate of the Supreme Court in the case of *Mohinder Singh Gill Vs. Chief Election Commissioner, 1978 (1) SCC 405*. The counsel further submitted that no statutory rule or regulation has been mentioned in the said impugned order of 8.6.2011 to deny the additional intake to the petitioner as has now been done in the counter affidavit by the respondent and thus the act of the respondent of non communication of the ground of rejection is illegal and arbitrary.

9. Mr. Maninder Singh, without prejudice to his above said submissions, in the alternative submitted that there is no prohibition in any of the provisions of the Indian Medical Council Act, 1956 which stipulates that any college whose first batch has not reached the final year and has not been recognized under Section 11 (2) of the

Act is prohibited from seeking additional intake . The counsel further submitted that the present case is not a case for increase of the admission capacity *per se* and the Medical Council of India, Opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Postgraduate Course of Study or Training) Regulations, 2000, Part II of which deals with the scheme for permission of the Central Government to increase the admission capacity in any course of study or training in the existing medical colleges and institutions and sub-clause 3 of which deals with the “Qualification Criteria” are not applicable to the case of the petitioner.

10. Drawing attention of this Court to Regulation 8(3) of the Medical Council of India Establishment of Medical College Regulations, 1999 cited by the Medical Council of India in its counter affidavit, the counsel submitted that the said clause talks about a formal recognition and not simply a recognition which means that the said recognition is a formality and nothing else. Further drawing attention to page 224 of the paper book which is a statement indicating the year wise targets to be achieved by applicant of a new medical college/institution, Annexure II to the Medical Council of India,

Requirements to be fulfilled by the Applicant Colleges for obtaining Letter of Intent and Letter of Permission for Establishment of New Medical Colleges and Yearly Renewals under Section 10A of the IMC Act, 1956, the counsel pointed out that the statement provides for gradual increase of various facilities existing in a college, for example, the staff requirement at the time of beginning of the first admission has to be 25% of the staff components and at the time of first renewal 50%, at the time of second renewal 75% and at the time of third renewal 100%, thus, demonstrating that the regulations contemplate the year wise check of infrastructure and targets to be achieved and what is granted at the end of 5 years is a formal recognition only.

11. Tracing the history of Section 10A of the Indian Medical Council Act, counsel submitted that before the introduction of the said section in 1993 there was no provision for any prior permission from the Central Government for the establishment of a new medical college and it is only when the MBBS students admitted in a college reached the final year, the request for recognition at the time of MBBS examination was to be sent to the Central Government and consequently the MCI was required to carry out the inspection of the college in terms of section 17 of the Act and the Central Govt. on

receipt of recommendations of the MCI pursuant to the said inspection, used to issue the notification under Section 11 (2) for granting recognition to the said medical college or institution.

12. Drawing attention of this Court to the judgment of the Apex Court in the case of *Pradeep Jain vs. UOI (1984) 3 SCC 654* and *Mridul Dhar vs. Union of India 2005 (2) SCC 65*, the counsel pointed out that the Supreme Court while approving an All India Quota in the Medical Colleges has taken into account the seats to be contributed to the All India Quota by the private colleges also and the seats that are required to be contributed by the private colleges to the All India quota are also the seats of the colleges recognized by the MCI under section 10A and not seats under 11(2) alone. The counsel further submitted that unfortunately if any college closes down, the students who are already admitted in the said college pursuant to the permission or renewal granted by the MCI are treated to be having undergone a recognized course by the Medical Council for the purpose which they had spent in the college which has not been able to continue under Section 10A of the Act. The counsel also drew attention of this Court to the fact that the upper ceiling of 150 admissions at the time of commencement of a medical college annually incorporated in the MCI Regulations has now been increased

to 250 admissions annually which demonstrates that the Government of India contemplates for securing higher number of doctors for basic health care system in this country. Drawing attention of this court to (page 32 of the compilation of the petitioner) to the decision of the Board of Governors with regard to the request received for establishment/renewal/increase in seats in respect of institutions, at Item No. 77 which is a case of one Sikkim Manipal Institute of Medical Sciences, Gangtok where the permission for increase in intake i.e. from 50 to 100 seats for the academic year 2010-2011 was granted and then again was considered for additional intake from 100 to 150 for the academic year 2011-2012. The counsel submitted that this college was evaluated by the MCI for 150 admissions for 2011-2012 but was denied the said permission on the ground of deficiencies in the infrastructure, teaching and other facilities. The contention of the counsel for the petitioner, thus, was that had there been no deficiencies found by the MCI in this college, it would have been granted the permission for 150 admissions for the present academic year of 2011-2012 and the rejection letter in respect of the said college (at page 34 of the compilation) nowhere talks about the rejection on the ground of the prohibition contemplated in the Regulations as has been done by the respondent in the case of the

petitioner college. Similarly, the counsel pointed out that in the case of Maulana Azad Medical College, New Delhi (at page 36 of the compilation), it was permitted to initial intake of 180 students and the MCI granted the permission from 180 to 200 MBBS admissions for the academic year of 2010-2011 and once again, has granted increase in permission from 200 to 250 admissions to this college for the present academic year of 2011-2012. The counsel thus submitted that now with the amendment to the upper limit of intake of students, a new medical college at the time of commencement of the college can make 250 admissions whereas an existing college like the petitioner which has the adequate infrastructure in place and has also been found fit by the MCI for intake of 150 students cannot be allowed to increase its intake from 100 to 150 because of the unjust and unreasonable interpretations sought to be carved out by the respondent of the rules and regulations of the MCI.

13. Learned counsel for the petitioner further submitted that the petitioner institute had no doubt applied for initial intake for 150 students at the commencement of the college but then subsequently had asked that the course be started for 100 students but for the fourth batch for the academic year 2011-12 , the petitioner college applied for admitting 150 students again and therefore the increase

asked for by the petitioner college is not strictly “ additional intake” *per se* as appearing in the statute.

14. Referring to MCI regulations on Graduate Medical Education, 1997 unamended clause 6 (2) referring to migration, the counsel pointed out that the said clause mentions that both the colleges i.e. one at which the student is studying at present and one to which migration is sought are recognized by the MCI, thus showing that the recognition needed for migration was by the MCI alone and not by the Central Government. The counsel further referred to the notification dated 20.10.2008, wherein the said clause 6(2) has been substituted and now reads as that the migration of students from one college to another is permissible only if both the colleges are recognized by the Central Government under Section 11 (2) of Indian Medical Council Act 1956. The contention of the counsel for the petitioner was that wherever the requirement of the recognition by the Central Government under Section 11(2) of the Act was to be stipulated, it has been so stipulated in the MCI regulations as demonstrated by clause 6 above as the concept of recognition by the Central Government under Section 11(2) has been consciously incorporated by the abovesaid amendment. The contention of the counsel for the petitioner was that the recognition granted by the

MCI is different from the recognition granted by the Central Govt. under 11(2) and the petitioner in the present case does not have to wait for the recognition under 11(2) for admitting additional intake of students.

15. The petitioner while encompassing the scope and wide ambit of the jurisdiction of this court under Article 226 of the Constitution of India, referred to the judgment of the Apex Court in the case of *Comptroller and Auditor-General of India Vs. K.S.Jagannathan & Anr. (1986) 2 SCC 679* to submit that in order to prevent injustice, the court may itself pass an order or give directions which the Government or the public authority should have passed or given, had it properly and lawfully exercised its discretion. Further referring to the judgment of the Apex Court in the case of *Secretary, Cannanore District Muslim Educational Association vs. State of Kerala & Ors. 2010 (6) SCC 373*, the counsel submitted that the above judgment of *K.S.Jagannathan (Supra)* has been reiterated by the Apex Court in this case in which case the directions to sanction a higher secondary course had been granted by the court itself, thus showing that the court is empowered to directly grant approval or permission. Further referring to the judgment of the Apex court in *Al- Karim Educational Trust Vs. State of Bihar 1996 (8) SCC 330*, the counsel

laid emphasis on para 11 (h) to submit that the fate of the students should not hang in a balance in an everlasting manner due to the acts of the statutory authorities. Referring to para 12 of the same, the counsel submitted that appropriate directions can be given by this court itself in favour of the petitioner as well. Further referring to the judgment of this court in the case of *Integrated Education Development vs. UOI 82(1999) DLT 888*, and referring to para 9 of the same, the counsel submitted that the judgment of the Apex Court in *Al-Karim (supra)* was relied upon by this court to give relief for starting a new Dental College and submitted that even if there are minor deficiencies, this court in exercise of its jurisdiction can direct and grant recognition to the petitioner. Further referring to the judgment of the Calcutta High Court in the case of *Nazrul Islam vs. State of West Bengal & Ors. (2002) 1 CALLT 412(HC)*, the counsel submitted that the Hon'ble Calcutta High Court also gave directions to give recognition in the same manner. Emphasizing his contention, the counsel further referred to the judgment of the Madhya Pradesh High Court in *Mansarovar Dental College vs. UOI WP(C) No. 8809/09, order dated 9th October, 2009* submitted that in the said matter also the Hon'ble High Court directed the permission for additional intake in the BDS Course. Referring to judgment of the Division Bench of

the Madhya Pradesh High Court in the case of *State of M.P. Vs. UOI W.P.(C) 9653/10 decided on 23rd August, 2010*, the counsel submitted that in the said matter also the court granted interim stay on the refusal of the MCI to grant renewal and directed to hold the counseling of seats in question for allotment of seats. Counsel further drew attention of this court to the judgment of the Madras High Court in the case of *Madha Dental College & Hospital vs. UOI (2011) IMLJ 1065*, wherein relying upon the judgment of the Apex Court in the case of *Al-Karim (supra)* and yet another judgment of the Apex Court in *Anjuman E. Islam vs. State of Karnataka (2001) 9SCC 465*, a direction was given to the MCI to renew the permission of the petitioner for 3rd year BDS course. The counsel also referred to the judgment of the Madhya Pradesh High Court in the case of *Shri Aurobindo Institute of Medical Sciences v. UOI WP(C)4821/11 decided on 24.6.2011*, wherein the decision of the MCI rejecting the petitioner's prayer for grant of permission was quashed and a direction was given to issue the letter of recommendation for permission to start the PGMD Course in Forensic Medicine in the petitioner college. The counsel also referred to the order of the Supreme Court in SLP 16618/11 decided on 4th July, 2011 wherein the said judgment of Madhya Pradesh High Court in *Sri Aurobindo*

(*Supra*) was challenged by the MCI and the same was dismissed by the Hon'ble Supreme Court. Counsel further referred to the decision of the Hon'ble Rajasthan High Court in the case of *Mahatma Gandhi Medical College vs. MCI WP(C)9716/11 decided on 29th July, 2011*, and submitted that in the said case also the order of rejection of the MCI for the additional intake was stayed by the court and the college was allowed to participate in the counseling process subject to the final decision of the writ petition. Referring to the decision of the Division Bench of the Karnataka High Court in the case of *MVI Medical College and Research Hospital Bangalore vs. UOI WP(C)7771/11 decided on 22nd August, 2011* wherein the additional intake from 150 to 200 was permitted by the Hon'ble Court. Further drawing attention of this court to the judgment of the Apex Court in the case of *H.L. Trehan & Ors. Vs. UOI 1989 (1) SCC 764*, the counsel submitted that the Supreme Court observed that wherever the opportunity of hearing was given by a statutory authority to give a post decisional hearing on the representation of the parties before it, it did not yield any fruitful purpose and hence this court in exercise of writ jurisdiction may straightway grant relief of additional intake to the petitioner and not remand the matter to MCI.

16. Mr. Maninder Singh, Senior Advocate also appearing in W.P.(C) No. 5917/2011 submitted that the facts of the said case are similar to the facts of the case in W.P.(C) No. 5763/2011. The counsel also submitted that in W.P.(C) No. 5917/2011, the petitioner college was granted permission for 100 students and thereafter asked for admitting 150 students for the academic session 2011-12 and inspection was carried out for 150 admissions (as per the report placed at page 85 of the paper book) and deficiencies were found out and thus, the permission for additional intake was rejected. The counsel submitted that the respondent has changed its stand as per the letter dated 30th June, 2011 wherein it has cited the reason for not granting the permission for additional intake as criteria 1(1) under the heading "*Qualification Criteria*" in part II of the "Opening of a New or Higher Course of Study or Training and Increase of Admission Capacity in any course or Training Regulations, 2000" by quoting the unamended regulations which states that the Medical College/institution must be recognized by the MCI for running Bachelor of Medicine and Bachelor of Surgery/post graduate course and since the petitioner college is still not recognized for 100 admissions, the Board of Governors cannot grant the permission for additional intake. The counsel thus submitted that in this case also

the respondent has added the ground of qualifying criteria by a subsequent letter and initially the application was rejected only on the ground of deficiencies, which act of the respondent MCI is arbitrary and perverse in the light of the judgment in *Mohinder Singh Gill (Supra)*.

17. Mr. J.P. Sengh, Senior Advocate appearing for the petitioner in W.P.(C) 4920/11 submitted that the facts of the case at hand are broadly similar to the facts of earlier two petitions, but he only sought to carve out the legal incongruity in the said regulations cited by the respondent for arbitrarily refusing the grant of additional intake to the petitioner college. Mr. Sengh submitted that in the case of WP(C) 4920/2011, the petitioner college also applied for permission at the initial stage for intake of 150 students and the Essentiality Certificate and the Letter of Permission (LOP) was also granted for 150 students. The counsel also submitted that after applying for the additional intake of 150 students, the respondent MCI inspected the petitioner college both for 100 as well as 150 admissions. Drawing attention of this Court to Annexure P8 (page 52 of the paper book), the counsel pointed out that the assessment under Section 10A for the third batch of 100 students was done whereas against Section 11 (2) column, recognition has been duly mentioned. Further drawing

attention of this Court (page 70 of the paper book which is the letter of permission (LOP) for 150 admissions for academic year 2011-12) wherein against the column of number of seats as per Essentiality Certificate 150 is mentioned and against the column of plot of land is mentioned that the college is already existing and assessment for second renewal of 100 seats has been done in the present assessment. Drawing attention of this Court to a letter by the Board of Governors dated 11.4.2011 (Annexure P9 at page 88 of the paper book) the counsel submitted that the letter mentions that the assessment report was considered by the Board of Governors and decided to neither renew the permission for admission of third batch of MBBS students for 100 seats nor issue LOP for the proposed increase of seats from 100 to 150 for the academic session 2011-12 because of the reasons which are only the deficiencies existing in the petitioner institute. The counsel further pointed out a letter dated 30.6.2011 (placed on record as Annexure P14 at page 121 of the paper book) was sent by the Board of Governors to the petitioner college which states that regarding the request for grant of LOP for proposed increase of seats from 100 to 150, the Board of Governors noted that according to criteria 1(1) under the heading "Qualification Criteria" in Part II of the "Opening of a New Higher course of Study or Training

Regulations 2000”, the petitioner college is still not yet recognized for 100 admissions, and thus the Board of Governors as a policy have decided not to issue LOP for the proposed increase of seats under Section 10A of the IMC Act from 100 to 150 for the academic year 2011-12. The contention of the counsel for the petitioner was that if the petitioner college did not qualify to apply for additional intake as contended by the MCI now, then the MCI should not have entertained the application for such additional intake and carried out the subsequent inspection. The counsel contended that the MCI being a body much aware of the rules and regulations framed by the Board of Governors and under the Indian Medical Council Act, 1956 should have rejected the application of the petitioner for additional intake at the very outset and now it cannot turn around and cite the said regulation of “Qualification Criteria” for rejecting the application for additional intake.

18. The counsel referred to the “Qualification Criteria” under the “Opening of a New or Higher course of study or training and increase of admission capacity in any course of study or training Regulations 2000” clause 3(1)1. The counsel contended that the said regulation on which reliance has been placed by the respondent does not mention that the MBBS degree awarded by the said medical

college or institution has to be recognized for applying for additional intake and all that the said regulation mentions is that the medical college/institution must be recognized by the Medical Council of India for *running* the MBBS course. The contention of the counsel was that, however, for the start of post graduate course in a medical college, the MBBS degree awarded by that college must be a recognized degree and if in the event that the MBBS degree awarded by that college is not yet recognized, then the said college can apply for additional intake only at the time of the fourth renewal i.e. along with the admission of fifth batch for the MBBS course. The contention of the counsel for the petitioner was that there is no embargo for an institute to apply for additional intake before the grant of recognition of its MBBS degree as the said Qualification Criteria only stipulates that the institute/college applying for the additional intake must be running an MBBS course recognized by the Medical Council of India which recognition is recognition granted by the Medical Council of India under Section 10A of the Indian Medical Council Act and not recognition for the award of degree of MBBS as per Section 11(2) of the Indian Medical Council Act.

19. Mr. Sengh, learned Sr. Advocate further submitted that the MCI does not grant any recognition and it is only a

recommendatory body. The contention of the counsel was that the recognition is granted by the Central Government and not by the MCI and nowhere in Section 10A, more particularly sub-section 2(a) and sub-Section 4, there is any mention of recognition by the MCI but the recognition is only by the Central Govt. on the recommendations of the MCI. The contention of the counsel for the petitioner was that any regulation made in pursuance of a statutory provision referring to the regulations as cited by the counsel for the respondent in its counter affidavit cannot override the statutory provisions itself. The argument of the counsel therefore was that even without challenging the said regulations, the same can be read down for them to be harmoniously construed with the statutory provisions of the Act. The counsel further submitted while referring to sub-section 7 of Section 10A in none of the factors enumerated therein there is any mention of recognition in any of the sub clauses and hence submitted that recognition is the sole prerogative and privilege of the Central Govt. and the MCI is only a recommendatory body.

20. The counsel further submitted that if the argument of the respondent MCI is accepted then the whole purpose of yearly renewals being granted by the MCI would have no meaning. Counsel further submitted that the yearly monitoring by the MCI of

the infrastructure and other facilities of a medical college would have no purpose if the recognition which is granted after five years to the MBBS degree is considered so sacrosanct so as to deprive a college for allowing any additional intake before the completion of five years of its MBBS course.

21. Mr. Nidhesh Gupta, learned Senior Advocate appearing for respondent/MCI in W.P(C) No. 5917/2011 at the very outset sought to bring clarity to the interpretation of the various regulations as carved out by the counsel for the petitioners. Drawing attention of this Court to “The Opening of a New or Higher Course of Study or Training (including post graduate course of study or training) and Increase of Admission Capacity in any Course of Study and Training Regulations 2000”, read that in exercise of powers conferred by Section 10A read with Section 33 of the Indian Medical Council Act in supersession of the Establishment of New Medical Colleges, Opening of Higher Courses of Study and increase of Admission Capacity in Medical Colleges Regulations, 1993 in so far it relates to application for permission of the Central Government to increase the admission capacity in MBBS/higher courses in the existing medical colleges/institutions, the Medical Council of India with the previous sanction of the Central Government hereby makes the following

regulations; clause 3 (b) of which reads as the permission for establishment of a new or higher course of study no medical college shall increase admission capacity in any course of study or training including a post graduate course or training except after obtaining the previous permission of the Central Government by submitting schemes annexed to these regulations. Referring to (Page 194) the scheme under the said Clause 3(b) wherein clause 3 of the said scheme lays down the "Qualification Criteria", the counsel submitted that the said "Qualification Criteria" stipulates that the medical college/institution shall qualify to apply for increasing the number of admissions in MBBS if the conditions stipulated therein are fulfilled. The contention of the counsel for the respondent was that fulfillment of the said "Qualification Criteria" is a condition precedent for applying for additional intake for any medical college or institution. Referring to amended clause 3(1).1, the counsel stated that the said clause envisages recognition by the Medical Council of India and in the present cases, none of the petitioners are recognized by the Medical Council of India. Referring to the second part of the said clause, the counsel submitted that however, an institute willing to apply for additional intake in a post graduate course may do so only if the MBBS degree awarded by the said college is recognized and even

if the said degree of MBBS awarded by the said institute is not recognized, the college may apply for the additional intake in a post graduate course along with the fourth renewal i.e. along with the admission of the 5th batch of the MBBS course. The contention of the counsel for the respondent/MCI was that the said regulation cannot in any circumstances have two interpretations and on a plain reading of the said regulation, it is clear that any institute or college applying for additional intake must be recognized by the MCI which recognition means for the award of its MBBS degree. The counsel further submitted that in the absence of challenge to the said regulations, there are no two interpretations that are possible of the said regulation and the interpretation as sought by the respondent MCI being the logical and correct interpretation of the said regulation, the present petitions deserve dismissal on this ground alone.

22. The counsel for the respondent further submitted that the petitioner colleges herein are approved for running an MBBS course and not recognized by the MCI and hence recognition and approval are two different concepts and recognition is granted only after the completion of 5 years of the MBBS course. The counsel for the respondent MCI drew attention of this Court to the Medical Council of India, Establishment of Medical College Regulations, 1999 where

under clause 2 of the said regulations the “medical college” is defined as any institution by whatever name called in which a person may undergo a course of study or training which will qualify him for the award of any recognized graduate medical qualification. In the background of the said definition, the counsel drew attention of this Court to Clause 8 which refers to the “Grant of Permission” and clause 3 of the same which states that the permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to the verification of the achievement of annual targets etc. and this process of renewal of permission will continue till such time the establishment of the medical college and extension of the hospital facilities are completed and a formal recognition of medical college is granted. The contention of the counsel for the respondent was that the term “formal recognition” appearing in the said regulation means the recognition granted to the college only after the 5 years of the MBBS course have been completed and does not contemplate to mean the permission to run a medical college. The counsel further submitted that the said regulation also states the this process of renewal of permission continues till the establishment of medical college and expansion of hospital facility are completed and the scheme stipulates

that the medical college or institute will give an annual application and if it meets the requirement, then the permission is given to the institute on annual basis and after five years if all these requirements are met then a formal recognition is given. The counsel also submitted that if an Institute does not meet these requirements, then there is no question of giving recognition. The contention of counsel was that the formal recognition is to be given only if five years approval is given and after completion of five years, the college applies for recognition and not prior to that. The counsel submitted that in any case the petitioners colleges herein are at the stage of fourth renewal and the permission for additional intake is not permissible even in the fifth year as per the said regulation which states recognition of an MBBS course which is a course of 5 years and not recognition of first year or second year and so on. Drawing attention of this Court to the MCI requirements to be fulfilled by the applicant colleges for obtaining Letter of Intent and Letter of Permission for establishment of new medical colleges and yearly renewals under Section 10A of the Indian Medical Council Act, 1956, the counsel has pointed to Annexure II of the same which is a statement indicating yearwise targets to be achieved by applicant of a new medical college/institution admitting 50 students under Section 10A of the IMC Act which demonstrates the

yearly renewal and the targets to be achieved by the petitioner college. The contention of the counsel for the respondent was from the said statement it is clear that there are specified requirements set out for each year and it is only when all the said requirements are met and the college has fulfilled them, that a recognized MBBS degree can be granted and thereafter the College will be considered as a recognized medical college.

23. Referring to Section 10A of the Medical Council Act, 1956 the counsel drew attention to sub section 1(b)(ii) which provides for the increase in admission capacity in any course of training which cannot be done except with the previous permission of the Central Government obtained in accordance with the provisions of Section 10A of the Act. The counsel drew attention to Section 10A (2)(a) which states that for applying for additional intake, the medical college shall submit to the Central Government a scheme in accordance with clause (b) and the Central Government shall refer the scheme to the Council for its recommendations; Section 2(b) states about the said scheme which should be in such form and contain such particulars and be preferred in such manner and accompanied by such fee as may be prescribed. The contention of the counsel for the respondent was that the regulations referred by him hereinabove have been made by

virtue of the power conferred by Section 33 of the said Act more particularly clause (fa), which grants the power to the MCI to formulate a scheme to give effect to Section 10A of the said Act. Answering the question posed by this Court to the counsel for the respondent that whether “additional intake” appearing in Section 10A only confines to the intake allowed only after the recognition of the MBBS degree awarded by the said college, the counsel answering in the affirmative drew attention of this Court to Explanation 2 of Section 10A (1) which explains the term “admission capacity” appearing in Sub Section 1(b)(ii) as that capacity which relates to the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training and in the case of the petitioner institutes, the said admission capacity has been fixed at 100 admissions only. The contention of the counsel for the respondent was that all the regulations and the concerned Sections referred by him if read in totality would lead to only a single conclusion that no institute or college can apply for additional intake before the recognition of its MBBS degree and the petitioners herein have not placed on record any case where the respondent has granted permission for additional intake to any college without its MBBS degree being recognized.

24. The counsel for the respondent drawing attention of this court (annexure R2/1 colly page 178 in W.P.(C) No. 5917/2011) to the notification dated 4.9.2010 which is an amendment to the Indian Medical Council Act, where by virtue of clause 3B the MCI has been superseded by the Board of Governors and sub clause (ii) provides that Board the Governors shall grant permission under Section 10A, without prior permission of the Central Govt. including exercise of the power to finally approve or disapprove a college under Section 10A. The contention of the counsel for the respondent was that as of today the Central Government for the purposes of Section 10A stands superseded by the Board of the Governors and has to be read accordingly for the purposes of the present petitions as at the relevant time when the petitioner institutions had applied for additional intake, the Central Government stood superseded by the Board of Governors.

25. The counsel while responding to the argument of counsel for the petitioners that the petitioner institute had been duly approved and inspected for 150 admissions and the additional intake now sought cannot be said to be additional intake per se, the counsel submitted that on a plain reading of Explanation 2 of sub section 10A (1) which states that the admission capacity in a medical college

means the maximum number of students that may be fixed by the council from time to time for being admitted to such course or training and hence it is the prerogative of MCI to fix the number of students irrespective of what had been applied by the petitioner institute or for what the petitioner institute has been inspected for. The contention of the counsel for the respondent was that for whatever number the petitioner college has sought permission or additional intake is not relevant and will not define what is the admission capacity of that institute as Explanation 2 to clause 1 of Section 10A makes it crystal clear that the admission capacity is what has been fixed by the MCI. Responding to the argument of the petitioner that the expression “from time to time” appearing in the said Explanation 2 referred to hereinabove is in pursuance of the stipulation that additional intake is permitted under Section 10A of the Act without the same having any link with the recognition under Section 11 (2) of the Act, the counsel submitted that the expression ‘from time to time’ has to be read in consonance of the Act and the regulations framed thereunder and cannot be de hors to the rest of the provisions and regulations framed under the Act.

26. The counsel further submitted that Section 10A (2) (a) and (b) refer to a scheme to be made for carrying out the purpose of

Section 10A and such has been left to the concerned authorities which is the MCI and the MCI has thus made the regulations thereunder such as the qualification criteria for applying for additional intake by the medical colleges which stipulates that the college shall be recognized before being eligible to apply for additional intake. Referring to the said qualification criteria, the counsel submitted that the said provision states that the medical college must be recognized by the MCI and none of the petitioners in the present case has been recognized by the MCI. The contention of the counsel for the respondent was that the said qualification criteria does not state that whether the medical college is recognized for the first year or second year or third year but states that the medical college must be recognized by the MCI for running the MBBS course which condition is not fulfilled by any of the petitioners herein. Emphasizing the word 'however' occurring in the said regulation, the counsel submitted that the said word is in the nature of an exception which provides that any college which is not yet recognized for the grant of MBBS degree may apply for additional intake in post graduate course at the time of 4th renewal i.e. along with the admission of 5th batch of MBBS Course. The counsel thus submitted that the general rule occurring in the first part of the said regulation

is that the medical college must be recognized by the MCI for applying for additional intake in MBBS Course and it is only in the case of post graduate course, that by using the word 'however' an exception has been carved out. Referring to the same qualification criteria clause 1.1 before the amendment of 23.9.2009, the counsel submitted that the same provided that the Medical College should be recognized by the MCI for running the MBBS/PG Diploma/PG Degree/Higher Specialty Courses, thus demonstrating that even for applying for additional intake in a post graduate course, recognition of the post graduate course was a condition precedent and now by the way of the said amendment an exception has been carved out for the post graduate courses whereas for the MBBS course the condition of recognition by the MCI remains the same.

27. Referring to MCI, Establishment of Medical College Regulations 1999, clause 8(3), the counsel submitted that the term "formal recognition" read along with the "Qualification Criteria" referred to hereinabove and the provisions of Section 10A culminates into the fact that no increase can be permitted where the college has not been granted recognition under Section 11(2) of the Indian Medical College Act 1956.

28. Referring to the judgment of the Apex Court in the case of *MCI Vs. State of Karnataka & Ors.*, 1998 (6) SCC 131, the counsel submitted that the regulations framed pursuant to the Act by the MCI have a statutory force. Referring to the decision of the Apex Court in the case of *MCI Vs. Rajiv Gandhi University of Health Sciences and Ors.*, 2004 (6) SCC 76, the counsel submitted that the process of permission granted under 10A, the annual renewal and then a formal recognition and then an additional intake has been taken into consideration by the Hon'ble Supreme Court and has been granted sanction by the Hon'ble Court. Further referring to the decision of the Hon'ble Supreme Court in the case of *A.P. Christians Medical Educational Society Vs. Govt. of Andhra Pradesh & Anr.*, 1986 (2) SCC 667, the counsel sought to answer the contention of the petitioner wherein he had argued that this court has jurisdiction to issue directions on its own without remanding the matter back to the MCI, the counsel submitted that the said practice has been deprecated by the Hon'ble in the said judgment. Further referring to the judgment of the Apex Court in the case of *UOI Vs. Era Educational Trust and Anr.*, (2000) 5 SCC 57 the counsel submitted that the Supreme Court has deprecated the practice of the High Court in granting the permission to the colleges straightway but has

held that in such like cases the matter should be remitted back to the MCI for reconsideration. The counsel further referred to the judgment of the Apex Court in the case of *K.S. Bhoir Vs. State of Maharashtra and Ors., 2001 (10) SCC 264* that the Supreme Court has given importance to the maintenance of standards of Medical Education in the country and has held the Regulations to be mandatory which provide for the eligibility criteria to be complied with for making an application for additional intake in the admission capacity of a college.

29. Referring to the decision of the Hon'ble Supreme Court in *Balco Employees Union Vs. UOI 2002 (2) SCC 333*, the counsel submitted that this court in the scope of judicial review will not embark upon the enquiry of whether a public policy is wise, better or whether a different policy would be fairer, wiser, scientific or more logical. The counsel also referred to the judgment of the Apex Court in *Yash Ahuja Vs. MCI, 2009 (10) SCC 313*, wherein instead of impugned letters like the present case, a press note was issued by the MCI and the Apex Court held that the press release cannot be interpreted as precluding the MCI from canvassing the correct import of the provisions of the Act and it thus cannot preclude the court from placing the correct interpretation of the Act and thus in the present

case also the fact that the MCI in its subsequent orders cited the qualification criteria would not preclude this court or the MCI from interpreting the correct import of the Act.

30. Further answering the argument of the counsel for the petitioner that in the light of the judgment of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill* (supra) that the reasons for rejection or approval cannot be added by subsequent affidavits, the counsel drew attention of this court to the judgment of the Apex Court in the case of *All India Railway Recruitment Board Vs. K. Shyam Kumar*, 2010 (6) SCC 614 and submitted that after referring to the judgment of *Mohinder Singh Gill*, the Apex Court held that the same is not applicable where larger public interest is involved and in such situations additional grounds can be looked into to examine the validity of an order. The counsel thus submitted that the judgment of *Mohinder Singh Gill* (Supra) would not create any bar for giving additional grounds for the rejection of the application of additional intake of the petitioner colleges.

31. Answering the argument of the counsel for the petitioner that in case of Maulana Azad Medical College, New Delhi and Sikkim Manipal Institute of Medical Sciences, Gangtok where as per the

petitioner, the permission for additional intake has been given by the MCI, the counsel drew attention of this court to the judgment of this court in the case of *Tandan Kumar Vs. University of Delhi W.P.(C) No. 5329/2008 decided on 10.9.2008* wherein this court directing the implementation of the provisions the Central Educational Institutions (Reservation in Admission) Act, 2006 directed the increase of seats from 180 to 200 in the case of Maulana Azad Medical College and thus submitted that it is an entirely different case from that as sought to be canvassed by the counsel for the petitioner. Referring to the case of Sikkim Manipal Institute of Medical College wherein as per the counsel for the petitioner, additional intake has been granted, counsel for the respondent submitted that the said college is a recognized college and thus the additional intake sought by the said college is on entirely different footing than the one sought by the petitioner college herein. Even otherwise, counsel submitted that in the said case the application for additional intake had been rejected by the MCI and thus there can be no analogy imported from the said case by the petitioner in their favour.

32. Mr. Maninder Singh, Senior Advocate rebutting the submissions of the counsel for respondent MCI submitted that the expression "*time to time*" appearing in Explanation 2 to Section 10A

(1) means *time to time* before completion of five years of the course that is the maximum number of students fixed by the Council before recognition under Section 11(2) is achieved and after the recognition under Section 11(2) is granted, there is no *time to time* fixation of admission capacity.

33. The counsel further submitted that the interpretation of a statutory provision is not dependent upon the past practice or the understanding of either of the parties but is what is interpreted by the court of law. Referring to the judgment of the Apex Court in the case of *Mridul Dhar* (supra), the counsel submitted that in the said case, the Supreme Court gave interpretation to a statute which had been misunderstood and misinterpreted by the MCI since 1984 till 2005. The counsel further submitted that the controversy involved in the said matter was that the 15 % quota contribution from the colleges to the All India Quota was interpreted by the MCI as from those colleges only which have recognition under Section 11(2) but the Supreme Court held that seats under Section 10A are also recognized seats and there is no reason why they should not be contributed to the All India Quota and hence interpreted the provision as treating the said seats at par with the seats as recognized seats for the purposes of admission and additional intake. The counsel further drew the

attention of this Court to the fact that the said judgment was further clarified by the Apex Court in its subsequent order dated 12.7.2006 pursuant to which an amendment was carried out by the MCI in the Medical Council of India Regulations on Graduate Medical Education, 1997 in clause 6(2) relating to migration wherein the MCI instead of permitting migration from college recognized by the MCI replaced it by the College recognized by the Central Government under Section 11(2) which amendment dates to 20.10.2008. The counsel drew attention of this court to the “qualifying criteria” 3.1.1 and juxtaposed it with the clause 6(2) and submitted that the amendment in clause 3.1.1 was brought on 23.9.2009 and had the intention of the legislature been to inculcate the recognition under Section 11(2) in the said qualifying criteria, it would have explicitly done so as done in the case of the migration clause 6(2). The contention of the counsel for the petitioner was that the MCI is fully conscious of its Regulations and the language used in the clause 6(2) for migration purposes and comparing it with the language for qualifying criteria in clause 3.1.1. and the fact that the amendment being made subsequent to the one made to clause 6(2), the petitioner does not need to challenge the said Regulations for bringing to light the correct interpretation before this Court.

34. The counsel further responding to the use of the word “however” in the said qualifying criteria and the interpretation given to it by counsel for the respondent submitted that the increase referred to after the use of the said word “however” is the increase relating to the post graduate courses which contemplate that a college can apply for additional intake for its post graduate course at the time of the fourth renewal of the MBBS Course and it has nothing to do with the additional intake for the MBBS Course contemplated in the said Regulation. The submission of counsel was that the interpretation as sought to be carved out by respondent MCI is a regressive interpretation of the said statute and there is a danger if the said interpretation of the respondent MCI is accepted.

35. Counsel for the petitioner further commented upon the judgment of *K.S. Bhoir vs State of Maharashtra* relied upon by learned counsel for the respondent, and submitted that the said judgment states that the Regulations framed under Section 10-A have a mandatory force and the said position has not in any manner been disputed by the petitioner. Further referring to the judgment of the Apex Court in *Govt. of A.P. vs Medwin Educational Society(supra)*, the counsel submitted that the said case is not applicable to the facts of the case at hand as in the said matter the ‘Essentiality Certificate’

was not granted which is not the case in the present matter. Counsel has further distinguished the judgment in the case of *Balco Employees Union vs UOI*(supra) stating that there is no quarrel with the policy of the MCI but by the interpretation as carved out of the said policy by the MCI. The submission of the counsel for the petitioner was that the interpretation of the Regulation as sought to be carved out by the MCI is contrary to the policy of the Government of India.

36. Further distinguishing the judgment cited by the counsel for the respondent in the case of *Yash Ahuja vs MCI (Supra)*, the counsel submitted that in the said case the Supreme Court interpreted the Regulations in a manner which were contrary to the past practice of the MCI and thus submitted that the past practice or the understanding of any party is irrelevant for giving the correct interpretation of any provision. Further, referring to the judgment in the case of *All India Railway Recruitment Board vs K. Shyam Kumar* (supra) relied upon by the counsel for the respondent to distinguish the judgment cited by the petitioner in the case of *Mohinder Singh Gill (supra)*, the counsel submitted that in the said case of *Shyam Kumar* the applicability of *Mohinder Singh Gill* was distinguished because of availability of subsequent material in the form of CBI Report whereas in the present case there is no subsequent material

and the qualification criteria relied upon by the counsel for the respondent has been in existence since 2000 and is not any new or subsequent material for which *Mohinder Singh Gill (supra)* would not be applicable.

37. The argument of the counsel for the petitioner was that if the interpretation and the rationale behind the policy as contended by the respondent MCI is accepted, then the two cases as cited by him in the case of Maulana Azad Medical College, New Delhi and the Sikkim Manipal Institute of Medical Sciences could not have been granted permission for additional intake in the subsequent years. The counsel submitted that if the argument of the MCI is accepted that every college has to justify the infrastructure and other requirements for five years then the additional intake from 100 to 150 or more has also to stand test of five years before any subsequent intake is allowed, which interpretation is totally contrary to the policy of the Government of India which aims at creating more seats and more number of doctors in the country.

38. Responding to the arguments of Mr. Maninder Singh, Sr. Advocate, Mr. Nidesh Gupta, Sr. Advocate appearing for respondent MCI submitted that the manner in which the judgment in the case of

Mirdul Dhar (supra) has been interpreted by the petitioner is totally perverse as in the said case the issue involved was totally different and the observations which have been read by the petitioner during the course of the arguments are in a totally different context than what is being argued before this Court. Responding to the interpretation of the word, however, appearing in the qualification criteria the counsel submitted that this Court will interpret the said regulation in a way to uphold its validity in the absence of challenge to the said regulations. Responding to the argument of the counsel for the petitioner in juxtaposing the amendment in clause 6(2) relating to migration and the subsequent amendment in the “qualification criteria”, the counsel submitted that there were wholesale changes in the migration clause and not only the changes which have been mentioned by the counsel for the petitioner. On being specifically posed the question by this Court as to why in the amendment to the “qualification criteria”, recognition by Central Government has not been explicitly mentioned as has been mentioned in the said migration clause, the counsel submitted that there is no doubt that the amendment could have been better worded or drafted in a better manner but the same would not go on to mean that a totally different interpretation from what has been the intent of the legislature be

carved out by this Court. The counsel in the final arguments submitted that the report of the assessors is not a final report and the MCI is not bound by the same in making its final decision of approval or rejection of an application by any institute or medical college. Counsel also submitted that there can be no estoppel against a statute and if at all for the mistake of any of the officials of the MCI, the rules and regulations as reasons for rejection have not been mentioned in the impugned order, the same would not go on to mean that the same cannot be put forth by the MCI during the course of arguments or by subsequent communication. The counsel submitted that in the case of *Yash Ahuja* (supra) as has been held by the Supreme Court that the MCI was not bound by even a press release issued by it, the same can be construed to mean that the MCI would not be bound by the impugned letters and can certainly go on to mention the rules and regulations due to which the application of the petitioners has been rejected subsequently.

39. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the pleas advanced by them.

40. The three petitioners/ medical institutions are before this court to seek directions to direct the respondent Medical Council of India to grant additional intake of the seats in their respective institutes in terms of Section 10A of the Indian Medical Council Act, 1956. All these petitioners have claimed that their request for additional intake has been denied, not because they lack in meeting all the laid down requirements in terms of the regulations framed by the MCI with regard to the infrastructure, teaching faculty, financial resources, etc., but because these institutes have not yet reached the stage of awarding a recognized MBBS degree to their students. It is also the case of the petitioner in WP(C) no. 4920/11, that the deficiencies which were pointed out by the respondent MCI with regard to the said additional intake of 150 seats already stands rectified and vide order dated 30.6.2011 permission for the additional intake has been declined only because the petitioner has not yet reached the stage of awarding MBBS degree to its students of the first batch. In the case of petitioner in W.P.(C) No. 5763/2011 ,it was not even informed that the said additional intake has been denied because of the petitioner having not reached the stage of awarding MBBS degree to their

students and it is only after filing of the counter affidavit that they have come to know about the said reason of rejection.

41. Extensive arguments were advanced from both the sides. Taking a resolute stand, primarily on the interpretation of the provisions of Indian Medical Council Act and the regulations framed thereunder, Mr. Maninder Singh, learned Senior Advocate assisted by Mr. Gaurav Sharma, Mr. Neeraj Shekhar and Mr. Ashutosh Thakur, Advocates addressed arguments in W.P.(C) No.5763/2011 & W.P.(C) No. 5917/2011 while Mr. J.P. Sengh, learned Senior Advocate assisted by Mr. Ranjan Pandey, Advocate canvassed arguments for the petitioner in W.P.(C) No. 4920/2011. The Medical Council of India, was represented by Mr. Nidesh Gupta, learned Senior Advocate assisted by Mr. Amit Kumar and Mr. Ashish Kumar, Advocates.

RELEVANT RULES & REGULATIONS

42. Before this court proceeds further in the matter, it would be appropriate to set down the relevant provisions of the Indian Medical Council Act 1956 and the applicable regulations which are as under:

Section 10A - Permission for establishment of new medical college, new course of study, etc.

(1) Notwithstanding anything contained in this Act or any other law for the time being in force-

(a) no person shall establish a medical college; or

(b) no medical college shall-

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

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

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

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

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

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

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

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

PROVIDED that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard:

PROVIDED FURTHER that nothing in this sub-section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (2).

(5) Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (2) no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and, accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

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

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

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

(b) whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study

or training or to increase its admission-capacity has adequate financial resources;

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

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

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

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

(g) any other factors as may be prescribed.

(8) Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.

Section 10B - Non-recognition of medical qualifications in certain cases

(1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college shall be recognised medical qualification for the purpose of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Section 10C - Time for seeking permission for certain existing medical colleges, etc.

(1) If, after the 1st day of June, 1992 and on and before the commencement of the Indian Medical Council (Amendment) Act, 1993 any person has established a medical college or any medical college has opened a new or higher course of study or training or increase the admission capacity, such person or medical college, as the case may be, shall seek, within a period of one year from the commencement of the Indian Medical Council (Amendment) Act, 1993, the permission of the Central Government in accordance with the provisions of section 10A.

(2) If any person or medical college, as the case may be, fails to seek the permission under sub-section (1), the provisions of section 10B shall apply, so far as may be, as if, permission of the Central Government under section 10A has been refused.

Section 11 - Recognition of medical qualifications granted by Universities or medical institutions in India

(1) The medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act.

(2) Any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the Official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such

medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

Section 33-Power to make regulations

The Council may, with the previous sanction of the Central Government, make regulations generally to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations may provide for-

.....
(fa) the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of Section 10A;

MEDICAL COUNCIL OF INDIA

ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS, 1999

8. GRANT OF PERMISSION:

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

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

(3) The permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such

time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies.
(4) The council may obtain any other information from the proposed medical college as it deems fit and necessary.

MEDICAL COUNCIL OF INDIA

OPENING OF A NEW OR HIGHER COURSE OF STUDY OR TRAINING REGULATIONS, 2000

No.M.C.I.34 (41)2000-Med:- In exercise of the powers conferred by section 10A read with section 33 of the Indian Medical Council Act,1956 (102 of 1956), in super-session of the Establishment of new Medical Colleges, opening of higher courses of study and increase of admission capacity in medical colleges Regulations, 1993, in so far as it relates to application for permission of the Central Government for starting new or higher courses (including PG degree/diploma and higher specialities) in a medical college / institution and application for permission of the Central Government to increase the admission capacity in MBBS/Higher courses (including Diploma/ Degree/ Higher specialities) in the existing medical colleges/institutions, the Medical Council of India, with the previous sanction of the Central Government, hereby makes the following regulations, namely :-

(3) The permission for establishment of a new or higher course of study, etc.- No medical college shall,-

(a) open a new or higher course of study or training (including a post graduate

(b) course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

(b) increase admission capacity in any course of study or training (including a post-graduate course of study or training); except after

obtaining the previous permission of the Central Government by submitting Scheme annexed to these regulations.

3. QUALIFYING CRITERIA:

The medical college/institution shall qualify for opening a New or Higher Course of Study or training (including a post-graduate Course of Study or Training) in the medical colleges/institutions if the following conditions are fulfilled:

1. (1) The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Post graduate course;

The above Clause has been substituted with the following in terms of Notification published on 23.09.2009 in the Gazette of India

“The Medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate Course; however, the Medical College/Institute which is not yet recognized by the Medical Council of India for the award of MBBS Degree may apply for starting of a Postgraduate Course in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Community Medicine at the time of third renewal – i.e. along with the admission of fourth batch for the MBBS Course”;

43. Section 10A was introduced in the Indian Medical Council Act through an amendment by the Indian Medical Council (Amendment) Act, 1993 w.e.f. 27.8.1992. Along with the introduction of Section 10A, clauses (fa), (fb) and (fc) were also inserted in Section 33 of the Act to empower the MCI to make regulations to carry out the purposes of the Act and such regulations to provide the form of scheme, the particulars to be given in such scheme, the manner in

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which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of Section 10A of the Act. Prior to the introduction of Section 10A in the Act, there was no provision for any prior permission from the Central Government for the establishment of a new medical college and any medical college or institution desirous of getting medical qualification granted by it to be recognized was to apply to the Central Government and the Central Government on the receipt of recommendation of the MCI used to issue notification under Section 11(2) for granting recognition to the medical college/institution and such medical colleges were thereafter included in the First Schedule of the Act. In ***K.S. Bhoir Vs. State of Maharashtra (2001) 10 SCC 264***, the Hon'ble Apex Court while examining the exact import of Section 10A of the Indian Medical Council Act and the Regulations framed under Section 33 of the Act was of the view that the object of inserting Section 10A, 10B and 10C was for specific purpose of controlling the unchecked and unregulated mushroom growth of medical colleges which without the requisite infrastructure were resulting in decline in the maintenance of higher standards of medical education. The Apex Court also observed that it has been experienced that unless there is a required infrastructure available in the medical college, the standard of

medical education declines and until and unless an institution can provide complete facility for training to each student admitted to its various disciplines, the medical education will remain incomplete and the medical college would be turning out half baked doctors which in turn would adversely affect the health of the public in general. The Apex Court further observed that by every increase in the admission capacity, either one time or permanent, the Council is obliged to ensure the proportionate increase of infrastructure facilities. The Apex Court also observed that sub-section 1 of Section 10A begins with non- obstante clause “notwithstanding anything contained in the Act” which would clearly imply that there is prohibition in the matter of an increase in the admission capacity in a medical college, unless previous permission of the Central Government is obtained in accordance with the recommendations of the Medical Council of India. It would be thus seen that without the previous permission of the Central Government, which after the Notification dated 4th September, 2010 is now the Board of Governors in supersession of the Medical Council of India, no medical college can establish a medical college or open a higher or new course of study or training in post graduate course of study or training which would enable a student for the award of any recognized medical

qualification. Under Explanation 2 of Section 10A(1) the “admission capacity” in relation to any course of study or training (including a post graduate course of study or training) in a medical college means the maximum number of students that may be fixed by the Council from time to time for being admitted in such course or training. Under sub section 2(a) of Section 10 A, every person or medical college shall for the purpose of obtaining permission under sub-section (1) submit to the Central Government, a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations. Explanation 2 of Section 10A (1) and sub Section 2(a) of Section 10A clearly postulate that the admission capacity is not the one sought for or applied by the medical college but the one determined by the Council from time to time and such admission capacity for which the permission is sought by the college will be determined by the Council after such a college submits a scheme in accordance with the provisions of clause 2(b) whereafter the Central Govt. refers the same to the Council for its recommendations. The scheme which has been referred to in sub-section 2(a) of Section 10A of the Indian Medical Council Act is required to be submitted by the

medical college in accordance with the regulations framed by the MCI.

44. The MCI with the previous sanction of the Central Govt. also made regulations known as “The opening of a New or Higher Course of Study or Training (including Post-graduate Course of Study or Training) and Increase of Admission Capacity in any Course of Study or Training (including a Post-graduate Course of Study or Training) Regulations, 2000” in exercise of the powers conferred under Section 10A read with Section 33 of the IMC Act, 1956. These very regulations not only deal with opening of a new or higher course of study or training (post graduate course of study or training) by any medical college but at the same time deals with the increase of admission capacity in any such course of study or training (including post graduate course of study or training) in such medical colleges. So far the substantive provision dealing with the increase in the admission capacity is concerned, the same is envisaged in sub section (ii) of Section 10A(1) (b) of the Act where opening of a new or higher course of study with the maximum numbers to be fixed in relation to any course, study or training or the increase of admission capacity of such a college in any course of study or training is concerned, both have to be with the prior

permission of the Central Government which is now the Board of Governors in supersession of the Medical Council of India and for both, such medical college has to mandatorily follow the regulations as framed by the MCI in exercise of its powers under Section 33 read with Section 10A of the IMC Act 1956. Since in the present case, this court is not concerned with the question of establishment of any new medical college, therefore it would carry on further discussion which concerns the question of eligibility of an established medical college to seek increase in its admission capacity while it still has not reached the stage of completing five years undergraduate course for the award of an MBBS degree. All the three petitioners are seeking increase in their existing strength but their common plea is that they are legally entitled for such increase without having reached the stage of awarding of MBBS degree to the first batch. The case of the petitioner institute in W.P.(C) No.5763/2011 is rather a step ahead who has taken a stand that in fact they are not even asking for any increase as they had initially applied for 150 seats but then later themselves had opted for less number of seats i.e. 100, and therefore for all practical purposes the increase in strength now sought by the petitioner is as per their original request. This petitioner institute has also taken a plea that

the request for additional intake on the said ground of it being not qualified for the same due to the non awarding of MBBS degree as yet has been urged by the respondent only before this court and as per the judgment of Apex Court in the case of ***Mohinder Singh Gill vs. The Chief Election Commissioner (1978) 1 SCC 495*** the grounds or reasons for rejection must appear from the order itself and not through the affidavit supplied in Court. Since the rejection by the MCI in all the three cases is on the common ground i.e. all these petitioners have not yet reached the stage of awarding MBBS degree to their first batch, to qualify and apply for increase of additional intake, therefore, this court will proceed in all the three cases to test the merit of the arguments advanced by both the parties on the eligibility or ineligibility of these petitioners for the grant of additional intake and therefore the reasons given by the respondent MCI even before this court through their counter affidavit will be taken into consideration.

45. Claiming the legal right for the increase of the seats, counsel representing the petitioner in WP(C) No.5917/2011 took a stand that in fact the petitioners are not asking for any additional increase in the seats as for the same number of seats they had originally applied for and were not granted approval for the number

of seats applied by them. So far the petitioner in WP(C) No. 5763/11 is concerned, it made a request on its own for less number of seats even though its infrastructure was in place for the seats applied by it.

46. In the alternative, another argument which was canvassed before this Court by the petitioners is that there is no prohibition under any of the provisions of Indian Medical Council Act, 1956 that any applicant college which is still within the purview of Section 10A of the Act and has not yet reached the stage of Section 11(2) of the Act for formal recognition can be prohibited from seeking an increase in the admission capacity. It is also the case of these petitioners that even the regulations made by the MCI under Section 10A read with Section 33 of the Act do not create any prohibition against these colleges for seeking increase in its admission capacity before they are granted recognition by the Central Government under Section 11(2) of the Act.

47. It is also the case of the petitioners that wherever the recognition by the Central Government under Section 11(2) of the Act was to be stipulated, the same has been so stipulated in the MCI regulations. To fortify this argument, counsel for the petitioners referred to the amendment introduced by the respondent MCI in

Clause 6(2) of the Regulations of Graduate Medical Education, 1997 on 20.10.2008 (vide notification No.MCI-34(41)/2008-Med-29527) wherein the requisition by Central Government has been specifically mentioned as opposed to recognition by the MCI while in the amendment introduced by the respondent MCI on 23.9.2009 amending clause 3 (1).1 of the “Qualifying Criteria” in Regulations of 2000 where the term ‘Medical Council of India’ was not substituted by the term ‘Central Government’. Counsel also argued that if both the provisions are taken into consideration in juxtaposition, then the intendment of the framers of the regulations would be amply clear that they never intended to introduce the recognition to come through the Central Government in terms of Section 11(2) of the IMC Act. Counsel for the petitioners has also taken a stand that they are not challenging either the provisions of the Act or any of the regulations but asserting their right, considering these regulations and the provisions of the Act as they exist and the same being intra vires and not ultra vires to the substantive provisions of the Act and the scheme framed therein.

48. In contraposition, the respondent MCI has taken a stand that none of the petitioners qualify the laid down criteria to seek increase in their admission capacity as none of these petitioners

have been recognized by the Medical Council of India for running MBBS course. It is the case of the respondent that the petitioner institutes are not eligible to seek increase in their admission capacity of MBBS course without meeting the qualifying criteria laid down under the scheme i.e. part II of the Regulations, 2000 which imposes a pre-condition of recognition by the MCI for running MBBS course. The respondent thus submitted that the college which has not yet reached the stage of awarding MBBS degree will not be eligible to apply for the increase of its admission capacity. The respondent also referred to regulation 8 of the Medical Council of India, Establishment of Medical College Regulations, 1999, to strengthen his stand as it clearly states that the process of renewal of permission in a medical college will continue till such time the establishment of medical college and expansion of medical hospital facilities are completed and a 'formal recognition' to the medical college is granted. The contention raised by the counsel for the respondent was that any hospital or college will reach the stage of formal recognition only after the grant of yearly renewals, subject to verification of the achievements of the annual targets by the college and when it reaches the stage of awarding MBBS degree to its students and then only such a college will become eligible for the grant of formal recognition.

49. Counsel for the respondent laid strong emphasis on the argument that the petitioners have not challenged the applicable regulations and in the absence of any challenge to such regulations, this Court will not dwell to test the validity of these regulations or to strike down the same in the absence of any such challenge. Counsel also took a stand that the language used in the regulations is simple, plain, clear and unambiguous and, therefore, any of such plain expression used in these regulations cannot be “read down” just to suit the interpretation being advanced by the petitioners. It is also the case of the respondent that these regulations of 2000 have stood the test of time and never before they have been interpreted in a manner contrary to what has been canvassed by the MCI and there is no single instance placed on record by the petitioners that any of the institutes were ever granted additional intake in violation of the regulations without reaching the stage of award of the MBBS degree. The contention raised by the counsel for the respondent was that the fact of these regulations being successfully in operation for over a decade itself establishes the soundness and validity of these regulations. Counsel also argued that these regulations are founded on salutary principles and even if this Court finds that a better policy can substitute the existing policy then the same by itself would not be

a ground for interference by this Hon'ble Court as the Court cannot strike down a policy decision taken by the Government merely because it feels that another policy would be fairer or wiser or more scientific or logical.

CONTROVERSY

50. There is no dispute with the fact that the petitioners have not challenged any of the provisions of the regulations and have proceeded with their case taking these regulations and the scheme of the Act as the same exists but advancing an interpretation different from the MCI. In such a scenario there would be no hurdle in dismissing these petitions in case this Court finds that the petitioners cannot succeed in the present petitions in the absence of the challenge made by them to the applicable regulations. However, the crucial question before this Court would be whether the petitioners can succeed in these writ petitions without posing any challenge to the said regulations and yet satisfying this Court that they are entitled for the grant of increase in seats without reaching the stage of awarding MBBS degree. To test this legal proposition, let me again revert back to the relevant provisions of the MCI Act and the applicable regulations, which as per the counsel for the respondent

create a road block for these petitioners to even apply for increase in their admission capacity.

BLUEPRINT OF IMPLEMENTATION: THE SCHEME

51. It is not in dispute between the parties that whether for opening of a new or higher course of study by any medical college or for increase in its admission capacity in such a course, the permission of the Central Government (The Board of Governors in suppression of the MCI) is required to be obtained. It is also not in dispute between the parties that the admission capacity of an applicant college will be determined by the MCI after the MCI finds that whether such a college fulfills the laid down criteria of meeting the requisite infrastructure, faculty, financial resources, etc. in terms of the regulations in conformity with the scheme submitted by the petitioner. Sub-Section 4 of Section 10A empowers the Central Government to either approve the scheme with such conditions, if any, which it may consider necessary, or disapprove the scheme under sub Section 7 of Section 10A. The Medical Council of India while making its recommendation under Clause (b) of Sub Section 3 of Section 10A and the Central Government while passing an order by approving or disapproving the scheme under sub Section 4 of

Section 10A shall have due regard to the factors mentioned in clauses (a) to (g) of Sub-Section 7 of Section 10A which directs these authorities to examine whether the proposed medical college is in a position to offer the minimum standards of medical education and adequate financial resources to open a new or higher courses of study or to increase its admission capacity; whether it has necessary facilities in respect of staff equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or for accommodating the increased admission capacity to be provided within time specified in the scheme; whether the proposed medical college or existing medical college has adequate hospital facilities having regard to the number of students likely to attend such medical college or course of study or whether any arrangement has been made or programme drawn to impart proper training to students by the persons having recognized medical qualifications; the requirement of manpower in the field of practice of medicine and any other factors as may be prescribed. Section 10B of the IMC Act deals with non-recognition of the qualifications where an existing medical college is established except with the previous permission of the Central Government in accordance with the provisions of Section 10A of the Act and similarly where a medical college opens a new or

higher course of study or training (including a post graduate course) without seeking prior permission of the Central Government. Section 10C deals with those colleges which were established after 1st June, 1992 and before the commencement of Indian Medical Council (Amendment) Act, 1993 to seek permission of the Central Government in accordance with the provisions of Section 10A within a period of one year from the date of the commencement of the Indian Medical Council Amendment Act, 1993. Section 11 of the Act deals with recognition of the medical qualification granted by Universities or medical institution in India. It is pertinent to mention here that Section 11 nowhere deals with the increase of seats or even talks about any refusal of increase of seats till the medical qualification granted by any University or till medical institution is included in the First Schedule of the Act. It would be thus quite evident that increase of seats so far Indian Medical Council Act, 1956 is concerned, the same is dealt only under Section 10A(1)(b)(ii) of the Act.

52. So far the establishment of a New medical college or New or higher course of study or training (including post graduate course or study or training) is concerned, Section 10A, 10B and 10C along with the regulations framed by the MCI under Section 33 (fa) holds

the field. The Apex Court in the case of *K.S. Bhoir (supra)* has eloquently dealt with the entire scheme of the Act specially after the insertion of 10A, 10B and 10C in the same. It would be useful to reproduce the following relevant paras from the said judgment:-

"Coming to the first question, since long time past, establishing of a medical college and medical education therein are governed by the Indian Medical Council Act, 1956 (hereinafter referred to as the Act) and Dentist Act, 1948. Despite there being such provisions, it was experienced that large number of persons and institutions established medical colleges without providing therein the minimum necessary and proportionate infrastructure i.e. teaching and other facilities required for them. As a result it was found that there was sharp decline in the maintenance of higher standard of medical education. In order to put check on unregulated mushroom growth of medical colleges and maintain high standard of medical education, it was thought to bring more stringent provisions in the Act. With the aforesaid view of the matter, in the year 1993, Section 10A 10B and 10C were inserted in the Medical Council Act by amending Act 31/93. Similarly, the provisions of Sections 10A 10B and 10C were also incorporated in the Dentists Act, 1948. Sub-section (1) of Section 10A of the Act provides that no person shall establish a medical college or no medical college shall open a new or higher course of study or training or increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the Act. Sub-section (2) thereof provides that every person or medical college desirous of opening a medical college or increase its admission capacity in any course of study or training, including a post graduate course of study or training shall submit to the Central Government a scheme prepared in accordance with the provisions of the Act and the Central government shall refer the said scheme to the Medical Council for its recommendation. Sub-section (3) of Section 10A further provides that on receipt of such a scheme by the Council, it may obtain such other particulars, as may be considered necessary and consider the said scheme having regard to the factor referred to in Sub-section (7) of Section 10-A of the Act and send its recommendations to the Central Government. Under sub-section (4) of Section 10A, the Central Government, on receipt of the recommendation of the Medical Council is empowered to either approve or disapprove the scheme. It may grant or refuse permission to open a medical college or increase its admission capacity. If it is found that the scheme is not in conformity with the provisions of the Act and regulations framed thereunder, it may refuse to accord permission to increase the admission

capacity in any course of study or training. Section 33 of the Act empowers the Medical Council to make regulations for carrying out the purposes of the Act. The Medical Council in exercise of power conferred by Section 33 read with Section 10A of the Act has framed regulation known as 'Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993' (hereinafter referred to as the 'regulations'). The said regulation provides for eligibility criteria to be complied with even for making an application and part of the said regulations deal with the requirements to be complied with when any medical college applies for increase in admission capacity in the college. A perusal of the provisions of Section 10A read with regulations shows that it is mandatory on the part of the institution or management desirous of increasing its admission capacity in any course of study to submit a scheme complying with the provisions of Sub-section (7) of Section 10A and the requirements envisaged under the regulations. If any of the infrastructure facilities, as required either under Sub-section (7) or under the regulations are absent, it is open to the Central Government to refuse permission for increase in the admission capacity in any course of study in a medical college. The object of compliance of requirements mentioned college in Sub-section (7) of Section 10A and the regulation is to ensure the maintenance of highest standard of education. In Medical Council of India v. State of Karnataka and Ors. - 1998 (6) 131 and Preeti Srivastava and Anr. etc. v. State of Madhya Pradesh and Ors. etc. : AIR1999SC2894, it was held that the regulations framed by the Medical Council under Section 33 of the Act are mandatory. In Medical Council of India v. State of Karnataka (supra), while dealing with the admission made in excess of intake capacity fixed by the Council, this Court observed thus:

"...A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study..."

9. The compliance of the requirements under the Act and the regulations being mandatory, in the absence of its compliance, no permission can be granted by the Central Government for increase in admission capacity in any course in any medical college. In the present case, the State Government sought one time increase in admission capacity in various medical colleges on the premise that medical colleges possessed all the facilities. This was not sufficient. What was required, was that medical colleges desirous of one time increase in admission capacity should have submitted a scheme prepared in accordance with the Act and the

regulation to the Central Government. No such scheme was submitted to the Central Government and medical council has no occasion to verify the sufficiency of the facilities and other requirements. There being no compliance of requirements under the Act, the Central Government was justified in refusing the permission for one time increase in the admission capacity in the medical colleges. We do not, therefore, find any infirmity in the order of the Central Government when it refused to grant permission to the State Government to have one time increase in admission capacity in Medicine and Dentistry in various medical colleges located in the State of Maharashtra.

10. It was then urged by the learned counsel appearing for the appellants that the provisions of Section [10A](#) do not prohibit the possibility of one time enhancement of intake capacity for admission to medical colleges and, thus, permission ought to have been granted by the Central government for such a one time enhancement or creation of additional number of seats beyond 150 in view of extraordinary situation and the refusal on the part of the Central Government to grant such permission was erroneous. It was also argued that Sub-sections (1) to (5) of Section [10A](#) being merely procedural, Sub-section (7) of Section [10A](#) providing for factors to be taken into consideration for an increase in the admission capacity in a medical college has an overriding effect on the procedural provisions of Sub-section (1) to (5) and, therefore, the Central Government committed an error in refusing to permit one time increase in admission capacity in Medicine and Dentistry courses in the medical colleges. We do not find any merit in the submission. Sub-section (1) of Section [10A](#) is a substantive provision in itself and begins with non-obstante clause "notwithstanding anything contained in the Act.." it means there is a prohibition in the matter of an increase in the admission capacity in a medical college unless previous permission of the Central Government is obtained in accordance with the recommendation of the Medical Council of India. The entire scheme of Section [10A](#) of the Act has to be read in consonance with other sub-section to further the object behind the amending Act. The object being to achieve highest standard of medical education. The said objective can be achieved only by ensuring that a medical college has the requisite infrastructure to impart medical education. As noticed earlier, the object of amending Sections [10A](#) [10B](#) and [10C](#) was for a specific purpose of controlling and restricting the unchecked and unregulated mushroomed growth of medical colleges without requisite infrastructure resulting in decline in the maintenance of highest standard of education. The highest standard of medical education is only possible when the requirement of provisions of Section [10A](#) and the regulations are complied with. It has been experienced that unless there is required infrastructure available in the medical college, the standard of medical education has declined. Unless an institution can provide complete and full facilities for training to each student who is admitted in various discipline, the medical education would remain incomplete and the medical college would be turning out half-baked

doctors which, in turn, would adversely affect the health of public in general. Thus, for every increase in the admission capacity either it is one time or permanent, the Council is obliged to ensure a proportionate increase of infrastructure facilities. The Medical Council can only make recommendations to the Central Government for grant of permission for one time intake capacity in seats only when it is satisfied that scheme to be submitted by the medical colleges fulfils all the requirements. Unless such a scheme providing for all the requirements provided for in the Act and the regulations is submitted to the Central Government and the Medical Council is satisfied that the scheme complies with all the requirement and makes a recommendation to that effect, only then the Central government can consider for grant of permission for increase of admission capacity in a medical college. Similarly, the Central Government without compliance of the Act and the regulations cannot grant, without recommendation of the Medical Council, any permission for one time increase in admission capacity in various courses conducted by the medical colleges. For the aforesaid reasons, we are of the view that the Central Government was fully justified when it rejected the request of the State Government for grant of permission for one time increase in the admission capacity in medicine and Dentistry courses in various medical colleges in the State of Maharashtra."

53. From the aforesaid observations of the Hon'ble Supreme Court, it would be quite explicit that it is mandatory on the part of the institution or college desirous of increasing its admission capacity in any course of study to submit a scheme complying with the requirements laid down under sub Section 7 of Section 10A of the Act and the requirements envisaged under the regulations. It is also quite manifest that if any of the infrastructural facilities as required under sub Section 7 of Section 10A and the applicable regulations are absent, then it is open to the Central Government to refuse permission for increase in the admission capacity in any course of study in a medical college. Under Clause 8 of the Medical Council of

India, Establishment of Medical College Regulations 1999, it is the Central Government which on the recommendation of the Medical Council, may issue a Letter of Intent to the applicant to set up a new medical college with such conditions and modifications of the original proposal as may be considered necessary. This formal permission to establish a medical college is granted initially for a period of one year and then is renewed on yearly basis subject to verification of achievements of annual targets by such an institute/college. Under the said regulation, it is the responsibility of the person to apply to the Medical Council of India for the purposes of renewal, six months prior to the expiry of the initial permission and this process of renewal of permission will continue till such time the establishment of medical college and expansion of the hospital facilities are completed and a formal recognition by the medical college is granted

54. It would be thus apparent that under the regulations, renewal of permission is not automatic and it has been made dependent yet again on the yearly inspections when the Council assesses whether the institute/college has achieved the laid down annual targets or not. From the entire scheme of the Act and the regulations framed thereunder it is evident that every college/institute has to strictly adhere to the norms laid down under

the regulations and non fulfillment of the same can result into withdrawal of the recognition as envisaged under Section 19 of the IMC Act. It is not the vested right of a medical college or an institute which has been granted initial permission for running the medical college to continue with the initial intake of students in the next year as well, as under the scheme of the Act and regulations, the approval for every year has been stipulated.

THE CORE QUESTION: ADDITIONAL INTAKE

55. It cannot be of any dispute that the admission capacity of a medical college is determined by the Council and in terms of Explanation 2 of Section 10A (1) of the Act, the maximum number of students that may be fixed by the Council from time to time may vary. For instance, an institute under sub-Section 2(a) of Section 10A may submit a scheme for seeking admission of 150 students in the MBBS course but may or may not be found by the Council to be capable of admitting the applied number of students after looking into its infrastructure, teaching faculty, financial recourses and other norms laid under regulations. Then, the question that arises is that:

“Would such an institute which was granted initial intake of lesser number of students than the maximum limit permissible as applied by such an institute or even if not applied for the maximum number, can be deprived for the additional increase in second year or in the subsequent years till it reaches the stage of awarding the MBBS degree?”

56. As per the stand taken by the respondent/MCI, till such college/institute reaches the stage of awarding an MBBS degree, it is disqualified to apply for such an additional increase and in contradiction to the same, the stand of the petitioners is that under the Act and the regulations framed thereunder, they have a legitimate right to ask for such additional increase even prior to the reaching of the stage of award of the MBBS degree. As per the respondent, the mandate of Clause 3(1).1 of Opening of New or Higher course of Study or Training (included Post Graduate course of Study or Training) and Increase of Admission Capacity in any Course of Study or training (including a Post Graduate Course of Study or Training) Regulations, 2000” the medical college/institution shall qualify to apply for seeking increase in the number of admissions only after such medical college/institution is recognized by the Central Government for the award of MBBS degree in terms of Section 11(2) of the Act. Counsel for the respondent also explained that these regulations were founded on salutary public policy as after having

experienced that on number of occasions medical colleges were not fulfilling the yearly requirements laid down under the regulations for the grant of yearly renewals, thus jeopardizing the careers of the students, therefore arose the requirement of such a stringent measure not to grant any additional increase to any medical college unless such a medical college is recognized for awarding the MBBS degree. Counsel also submitted that the reason for such a bar is that by that stage the institute reaches a stage of showing its credentials for imparting education for a prestigious course like the MBBS. The entire reasoning of the counsel for the respondent primarily was based on the said clause 3(1).1 of 2000 Regulations and to some extent on clause 8 of the 1999 Regulations. Otherwise on a plain reading, this concept of recognition nowhere can be seen to be referred under Section 10A, 10B, 10C of the Medical Council Act so far the issue of increase or additional intake is concerned.

THE REGULATORY DESCENDENT: BOARD OF GOVERNORS

57. Here it would also be important to refer to the Indian Medical Council (Amendment) Act, 2010 which came into force on 15th day of May, 2010 and through this amendment Sections 3A, 3B and 3C were inserted in the main Act. With the said amendment, the erstwhile

Medical Council stood superseded and the same was reconstituted and in its place Board of Governors in supersession of the Medical Council of India were given powers to perform the functions of the Council under the Act. It would be relevant to reproduce Sections 3A, 3B and 3C of the amended Act as under:-

2. After section 3 of the Indian Medical Council Act, 1956 (hereinafter referred to as the principal Act), the following sections shall be inserted, namely:-

3A. (1) On and from the date of commencement of the Indian Medical Council (Amendment) Act, 2010, the Council shall stand superseded and the President, Vice-President and other member of the Council shall vacate their offices and shall have no claim for any compensation, whatsoever.

(2) The Council shall be reconstituted in accordance with the provisions of section 3 within a period of one year from the date of supersession of the Council under sub-section(1).

(3) Upon the supersession of the Council under sub-section(1) and until a new Council is constituted in accordance with section 3, the Board of Governors constituted under sub-section(4) shall exercise the powers and perform the functions of the Council under this Act.

(4) The Central Government shall, by notification in the Official Gazette, constitute the Board of Governors which shall consist of not more than seven persons as its members, who shall be persons of eminence and of unimpeachable integrity in the fields of medicine and medical education, and who may be either nominated members or members, *ex officio*, to be appointed by the Central Government, one of whom shall be named by the Central Government as the Chairperson of the Board of Governors.

(5) The Chairperson shall and the other members, other than the members, *ex officio*, shall be entitled to such sitting fee and travelling and other allowances as may be determined by the Central Government.

(6) The Board of Governors shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as is applicable to the Council.

(7) Two-third of the members of the Board of Governors shall constitute the quorum for its meetings.

(8) No act or proceedings of the Board of Governors shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board of Governors; or

(b) any irregularity in the procedure of the Board of Governors not affecting the merits of the case.

(9) A member having any financial or other interest in any matter coming before the Board of Governors for decision shall disclose his interest in the matter before he may, if allowed by the Board of Governors, participate in such proceedings.

(10) The Chairperson and the other members of the Board of Governors shall hold office during the pleasure of the Central Government..

3B. During the period when the Council stands superseded—

(a) the provisions of this Act shall be construed as if for the word “Council”, the words “Board of Governors” were substituted;

(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 reference therein to the Council shall be construed as references to the Board of Governors;

(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 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.

3C. (1) Without prejudice to the provisions of this Act, the Board of Governors or the Council after its reconstitution shall, in exercise of its powers and in the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Board of Governors or the Council after its reconstitution shall, as far as practicable, be given an opportunity to express its views before any direction is given under this subsection.

(2) The decision of the Central Government whether a question is a matter of policy or not shall be final.

58. As would be seen from Section 3B of the amended Act, now it is Board of Governors in supersession of the Medical Council of India which has been empowered to independently grant permission for establishment of a new medical college or opening of a new or higher course of study or training or even to increase admission capacity in any course of study or training referred to in Section 10A without prior permission of the Central Government under that section. With this amendment, the prior permission of the Central Government as stated in Section 10A of the Act would stand substituted with such a permission from the Board of Governors in supersession of the Medical Council of India. The said amendment, therefore has also brought a drastic change in the scheme of the Act

and the regulations framed thereunder as for opening a new medical college or opening of new or higher course or even for an increase, the Board of Governors in supersession of the Medical Council of India has the competence to take a decision without even seeking prior permission of the Central Government. However, so far recognition of any college or institute for the award of the MBBS degree is concerned, the matter still rests with the Central Government as there is no such dilution of power of Central Government and the same continues to vests with the Central Government. The Board of Governors in supersession of the Medical Council of India is not dependent upon the Central Government so far its authority to grant initial approval or the yearly approvals or even the increase in the admission capacity of a college is concerned, but certainly when the question of award of MBBS degree of a medical institute or college is concerned, the power only lies with the Central Government and not with the Board of Governors in supersession of the Medical Council of India. There is therefore a stark difference between the two stages. There is a stage when the Board of Governors in supersession of the Medical Council of India have been assigned the role under the scheme of the Act and the Regulations framed thereunder and the other stage when the power only vests

with the Central Government. Undeniably, when any institute or college reaches the stage of awarding the MBBS degree and it is then such an institute can be granted recognition under Section 11(2) of the IMC Act. To grant approval to establish a medical college and then to grant yearly approvals till before institute/college reaches the stage of finally awarding MBBS degree, can it be said that such an institute or medical college so far has not been recognized by the Board of Governors in supersession of the Medical Council of India.

THE ESOTERIC : “RECOGNITION”

59. This Court found merit in the submission of Mr. Maninder Singh, Sr. Advocate representing the petitioners that Section 10A seats are also required to be treated as duly recognized MBBS seats as otherwise *if in midst of the said MBBS degree course if any college closes down and has to transfer its students to other approved medical colleges, can it be said that the course undergone by these students from the previous college was not recognized by the MCI*. It is undeniable fact that that private medical colleges also contribute 15% seats in the All India quota and receive students on the basis of the merit of the candidates as per their rank in the common entrance

test and, therefore, also by no stretch of imagination the students undergoing courses in these approved private medical colleges by the MCI can be said to be considered as not undergoing such course duly recognized by the MCI. The yearly approvals by the MCI and final recognition by the Central Government as referred to under the Act and the regulations framed thereunder have to be understood thus in a different context. The grant of approval/permission by the MCI, now the Board of Governors in supersession of the Medical Council of India, to any medical college and then grant of yearly approvals on such college fulfilling all the laid down parameters under the Regulations are also in the nature of recognition granted by the MCI and formal recognition or to say final recognition will finally come when the Central Government finds that such an institute has reached the stage of awarding MBBS degree to its students. It would be thus apparent that this final recognition by the Central Government, looking into the entire scheme of the Act and Regulations framed thereunder, cannot be linked with the yearly approvals granted by the Board of Governors in supersession of the Medical Council of India. Conscious of this fact, the framers of the Regulations under 2000 Regulations Part II, Clause 3(1).1 also referred to such a recognition by the Medical Council of India for

running MBBS/PG diploma specialty courses. The use of expression “running” in the amended as well as unamended clause 3.1.1 of the said regulations is not without any significance. Manifestly in the amended and unamended clause 3.1.1 the same recognition has been linked with the Medical Council of India and not with the Central Government of India. For better appreciation and for the sake of repetition the unamended and amended clause 3.1.1 of the said Regulations are reproduced as under:-

3. QUALIFYING CRITERIA:

The medical college/institution shall qualify for opening a New or Higher Course of Study or training (including a post-graduate Course of Study or Training) in the medical colleges/institutions if the following conditions are fulfilled:

1. (1) The medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Post graduate course;

The above Clause has been substituted with the following in terms of Notification published on 23.09.2009 in the Gazette of India

“The Medical college/institution must be recognized by the Medical Council of India for running Bachelor of Medicine and Bachelor of Surgery/Postgraduate Course; however, the Medical College/Institute which is not yet recognized by the Medical Council of India for the award of MBBS Degree may apply for starting of a Postgraduate Course in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine and Community Medicine at the time of third renewal – i.e. along with the admission of fourth batch for the MBBS Course”;

THE POLEMIC: INTERPRETATION

60. I also found merit in the submission of the counsel for the petitioner that in the regulations dealing with the migration 6(2), the framers could substitute 'Medical Council' by 'Central Government' while referring to the necessity of both the colleges being duly recognized under 11(2), then why while amending clause 3 (1).1 of 2000 Regulations, the Medical Council was not substituted by Central Government. The relevant unamended and amended migration rules are reproduced as under:-

6. Migration

(2) Both the colleges, i.e. one at which the student is studying at present and one to which migration is sought, are recognised by the Medical Council of India.

The above clause 6 has been substituted in terms of notification published on 20.10.2008 in Gazette of India and the same is :

(2) Migration of students from one College to another is permissible only if both the colleges are recognised by the Central Government under section 11(2) of the Indian Medical Council Act, 1956 and further subject to the condition that it shall not result in increase in the sanctioned intake capacity for the academic year concerned in respect of the receiving medical college.

61. Lot of emphasis was laid by the counsel for the respondent on the use of the word "however" in the amended clause 3.1.1,

which as per the counsel is in the nature of an exception to the previous part. The contention raised by the counsel for the respondent was that the subsequent sentence after using the said word “however’ makes it abundantly clear that the medical college/institute, which is not yet recognized by the Medical Council of India for the award of MBBS degree could not apply for increase of intake in post graduate courses. Counsel also submitted that it is a settled legal position that no such interpretation will be given by the Court to a provision which rendered any part of the provision as otiose. At the first blush, this Court found merit in the submission of the counsel for the respondent but after having examined the entire scheme of the Act and the Regulations framed thereunder, the said argument of counsel for the respondent does not cut any ice. Although this Court is not dealing with the issue of an institute becoming eligible for increase of intake in a post graduate course, but in any case of the matter the use of expression “Medical Council of India” in the latter part again creates enough doubt to show that the recognition referred herein as well, is the same recognition which an institute or medical college is getting every year and then reaching the final stage of award of the degree. Had the intention of the framers of the regulations been, as expounded by the counsel for

the respondent, then the better expression to be used by the framers would have been “Central Government of India” in place of “Medical Council of India” and since the same being not the position, therefore, the said argument advanced by the counsel for the respondent cannot be appreciated.

62. Learned counsel for the respondent also raised the contention that even under clause 8(3) of the MCI, Establishment of Medical College Regulations, 1999 the intendment of the framers of regulation is amply clear from the use of the word “formal recognition” of the college i.e. recognition after such a college reaches the stage of completing the process of renewal of permissions. The contention of learned counsel for the respondent was that a medical college is not entitled for any formal recognition till it reaches the final stage after completing the targets of yearly renewals and then only it will become entitled for a formal recognition. The said Regulation 8(3), as already reproduced above, envisages that the permission to establish a medical college and admit students is granted initially for a period of one year and then the same is renewed on yearly basis subject to the verification of achieving annual targets by such a medical college. The said regulation also mandates that it is the responsibility of a medical

college to apply to the MCI six months prior to the expiry of initial permission to seek further renewal. It also further envisages that this process of renewal of permission will continue till such time the establishment of a medical college and hospital are completed by such college and then such a college would reach the stage of becoming entitled for a formal recognition.

63. The use of the expression 'formal' gives strength to the argument raised by learned counsel for the petitioner that a formal recognition is what a medical college will be ultimately entitled for after having reached the final stage of completing a MBBS course, although such a medical college can be said to be already 'recognized' for running an MBBS course based on the 'yearly approvals/renewals' which can be construed as yearly recognitions. Learned counsel for the respondent also did not refute the fact that the medical college when reaches the stage of awarding an MBBS degree becomes legally entitled to get recognition and that is why this use of the expression 'formal' is found in the aforesaid regulation. Irrefutably, any medical college when reaches the stage of awarding an MBBS degree becomes legally entitled for the grant of recognition by the Central Government and then can find its place in the First Schedule as envisaged under Section 11(2) of the IMC

Act. The expression 'formal' in the said Regulation has been consciously used by the framers of the regulations as the medical college when reaches the stage of awarding an MBBS degree then grant of recognition to such a medical college is a mere formality and is in the nature of a ceremonial act. The word 'recognition' used in "Qualification Criteria" is herein in Regulation 8(3), being qualified by the term 'formal' thus leaves no shadow of doubt that the recognition contemplated herein in Regulation 8(3) is by the Central Government and when used alone, the term 'recognition' is in the nature of a Section 10A recognition and nothing else. Therefore, it is crystal clear that the said 'formal recognition' referred to above in the regulation 8(3) has to come from the Central Government and not from the Council and in view of the detailed discussion above, this Court cannot subscribe to the plea taken by the respondent that the petitioner would not be entitled for the additional increase in case they have not yet reached the stage of grant of formal recognition. The yearly renewals for which the authority lies with the Board of Governors in Supersession of Medical Council of India, can be clearly seen in the form of yearly recognitions as every such yearly approval entitles a medical college to enter the next year till it reaches the final stage of award of MBBS degree. Thus, it cannot be

said that these yearly approvals by the MCI are not in the nature of recognition by the MCI as MCI certainly recognises such a medical college for those particular years for which it has already granted approvals. The said plea taken by the counsel for the respondent, therefore, also deserves to be rejected.

64. Mr. J.P. Sengh, Sr. Advocate representing the petitioner in WP(C) No. 4920/11 had also drawn attention of this Court to the recent notification dated 9th December, 2009 issued by the Medical Council of India through which the Medical Council of India has raised the maximum number of seats in MBBS course from 150 to 250 and also fixing some new parameters for annual intake capacity for 200 and 250 seats. For better appreciation the same is as under:-

MEDICAL COUNCIL OF INDIA

NOTIFICATION

New Delhi, the 9th December, 2009

“3. In “Part-II under the heading “Scheme for permission of the Central Government to increase the admission capacity in any course of study or training (including Postgraduate Course of Study or Training) in the existing medical college/institutions,” Clause 6 shall be substituted as under:

“6. The maximum number of admissions in MBBS course shall not exceed 250 annually provided that the eligibility criteria for fixing the upper ceiling of annual intake to 200/250 admissions annually shall be as under :-

A. For Annual intake capacity of 200

- (i) Number of teaching beds not less than 1250 with the standing of not less than 15 years.
- (ii) OPD strength per day not less than 2000.
- (iii) Bed occupancy average not less than 80%.
- (iv) The hospital must be unitary.

B. For Annual intake capacity of 250

- (i) Number of teaching beds not less than 1500 with the standing of not less than 15 years.
- (ii) OPD strength per day not less than 3000.
- (iii) Bed occupancy average not less than 80%.
- (iv) The hospital must be unitary.

65. The contention raised by the counsel was that the MCI by virtue of this notification can allow a new medical college or institute with admission capacity of the maximum intake of 250 students depending upon such a college fulfilling the laid down criteria of infrastructure and other parameters but is denying the permission for additional intake to a medical college already imparting education to the MBBS students with 2 or 3 yearly renewals to its credit. The contention raised by the counsel for the petitioner was that there cannot be different parameters for a new institute and an institute already established and approved by the MCI. This contention raised

by the counsel for the petitioner is not without any merit as it is

unfathomable that a new institute can be granted permission for full intake of admission capacity right in the first year itself but an institute like the petitioners will not be granted the additional intake of seats because it has not yet reached the stage of awarding MBBS degree to its Ist batch even though it has the requisite facilities and infrastructure in place. It cannot be overlooked that for increase of seats as well, the Council has to ascertain whether such medical college is fully equipped to undertake such an increase in terms of laid down regulations or not and, therefore, the parameters either at the stage of opening of a new medical college or at the stage of permitting an increase, the medical college is required to satisfy the laid down parameters and once such a medical college is found to have fulfilled all the laid down parameters without there being any deficiencies, this Court is of the view that there can be no reason that how additional intake of seats to such a medical college can be denied on the ground that it has not yet reached the stage of awarding MBBS degree.

66. One of the principal reasons given by the counsel for the respondent for introducing such a stringent measure was that many of the private medical colleges in the past failed to fulfill yearly requirements after granting admission to the students in the initial

stage and, therefore, before granting increase of additional intake to a medical college, the condition of such medical colleges reaching the stage of award of MBBS degree was introduced in the regulations. This Court has not been persuaded to conform to this view on analyzing the entire scheme of the Act and regulations framed thereunder, yet in any case of the matter, while permitting any institute to open a college or for granting yearly approval and even for granting additional intake, the noose is required to be tightened by the respondent MCI to ensure that none of the medical colleges either at the stage of opening the medical colleges or at the renewal stage or at the stage of applying for increase, are given approval/permission/renewal unless they strictly adhere to the laid down parameters and norms under the regulations framed by the MCI Act, which regulations indisputably have a mandatory force. It is a hard fact that the Government has not been able to establish more medical colleges or universities to keep pace with the aspiring and ever increasing demand of students desirous of seeking admission in MBBS course to fulfill their ultimate dream of becoming doctors, and therefore, there has been huge dependence on the private medical colleges. It also cannot be overlooked that large number of young boys and girls right from the stage of their secondary level start

preparing for the medical entrance test and while these students when faced with the challenge of scoring high percentage in their senior secondary exam, simultaneously prepare themselves for the MBBS entrance exams undertaking specialized coaching classes. Parents of such students also leave no stone unturned to see their children fulfilling their dreams and spend huge amount out of their hard earned money in getting them the best possible education. However, the percentage of the students who ultimately secure admission in MBBS course is miniscule and every year the ratio of the students appearing in the entrance tests is increasing manifold in comparison to the increase in the ratio of the seats in various private medical and Government colleges. There is thus a dire need for the opening of new medical colleges by the Government or even by the private bodies to meet the aspirations of young students. Equally important and rather more attention is required to be paid to the fact that there is no decline in the maintenance of standard of medical education as doctors who deal with the human lives cannot be seen to be half trained or half baked doctors. To ensure that highest standards are maintained in the medical colleges desirous of imparting education in the medical field, the solution will not come from denying these medical colleges the required increase but would

be to ensure that the increase is permitted in admission capacity to these colleges only when they strictly adhere to the laid down criteria and the regulations of the MCI. Experience has been that although the MCI/B0G comprises of experts and there are such other expert bodies like Dental college of India, AICTE, NCTE, etc. and wherever their concerned officers have indulged either in corruption or in giving undue favours, the same has resulted into compromising the standards of education in the field for which such institutes were given recognition or approvals. It will be thus not in the larger public interest to stop the growth of medical colleges when asking for increase if these medical colleges otherwise fulfill the laid down criteria of the regulations in terms of infrastructure and facilities.

67. The Apex Court in *Mridul Dhar vs Union of India* (Supra) repelled the argument of the MCI that only seats recognized under Section 11(2) are taken into consideration and not the seats which are permitted under Section 10A of the Act when the question before the Apex Court arose about including Section 10A seats for working out 15% All India quota in private and government colleges. It would be appropriate to refer the following paras from the said judgment here:-

"22. Yet another issue is about not taking into consideration, for determining All India Quota, those seats which are created under Section 10A of the Act. In the writ petition, number of seats which were not taken into consideration have been mentioned. According to MCI, only seats recognized under Section 11 are taken into consideration and not seats which are permitted under Section 10A of the Act. For deciding this issue, it is necessary to examine the provisions of the Act and the Regulations issued thereunder. Another connected issue also is regarding the establishment/renewal granted to medical and dental colleges including grant of permission to increase intake of the students. There is also the issue about the allocation of seats in respect of which, the letter granting permission is issued as per time schedule by the Central Government by 15th July.

23. Section 10(A) of the Act which was inserted by the Indian Medical Council (Amendment) Act, 1993 (Act 31 of 1993) with effect from 27th August, 1992, makes it imperative to seek permission for establishment of a new medical college, new course of study. In view of this Section, with effect from 1st June, 1992 prior permission is necessary. Section 10(A), inter alia, provides that notwithstanding anything contained in the Act or any other law for the time being in force--

(a) no person shall establish a medical college; or

(b) no medical college shall--

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

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

24. Section 10A(2)(a) provides that every person or medical college shall, for the purpose of obtaining permission under Sub-section (1) submit to the Central Government a scheme in accordance with the provisions of Clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

25. Along with Section 10A, Clause (fa) was also inserted in Section 33 to empower MCI to make regulations to provide for the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under Clause (b) of Sub-section (2) of Section 10A.

26. Section 11(1) of the Act, inter alia, provides that medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the

purposes of this Act. Section 11(2) provides that any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting Council, may, by notification in the Official Gazettee, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

27. In exercise of the powers conferred by Section 10A read with Section 33 of the Act, the MCI made the establishment of new medical colleges, opening of higher courses of study and increase of admission capacity in Medical College Regulation, 1993. The Regulations, inter alia, provided as a qualifying criteria that the eligible organization shall abide by Indian Medical Council Act, 1956 as modified from time to time and the regulations framed thereunder and shall qualify to apply for permission to establish new medical colleges only if the conditions therein are fulfilled. One of the conditions is that Essential Certificate regarding the desirability and feasibility of having the proposed medical college at the proposed location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration. It also provides that the applicant owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities and capable of being developed into a teaching institution as prescribed by the Medical Council of India, in the vicinity of proposed medical college. The MCI has also made the Establishment of Medical College Regulations, 1999 in exercise of powers conferred by Section 10A and Section 33 of the Act, inter alia, prescribing the form of Essentiality Certificate as a qualifying criteria to make application for permission to establish a medical college. These Regulations stipulate that Essentiality Certificate in Form-2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/Union Territory Administration.....

30. It cannot be doubted that proper facilities and infrastructure including teaching faculty and Doctors is absolutely necessary and so also the adherence to time schedule for imparting teaching of highest standards thereby making available to the community best possible medical practitioners. It cannot be said that such facilities are not insisted upon for Section 10A seats. **No instance has been brought to our notice where Section 10A seat in a Government college has not been recognized under Section 11.** The All India Quota seats are applicable only to

Government colleges. In many colleges, full-fledged seats for all intent and purposes in so far as medical education is concerned, whether in a new medical college or increase intake in an existing college, are continuing as 10-A seats. Prima facie, we see no reason why such seats shall not be taken into consideration for calculating 15% share of All India Quota. The 15% quota seats get substantially reduced by not taking into account Section 10A seats. We direct the Central Government, DGHS and MCI to examine this aspect in detail and submit a report, on consideration whereof we would finally decide the matter regarding inclusion of Section 10A seats for working out 15% All India Quota."

68. In the above case, the Apex Court clearly observed that no instance was brought to their notice by the MCI where Section 10A seats in the Government colleges have not been recognized under Section 11(2) and the distinction of Section 10A seats and recognition under Section 11(2) could be clearly seen. Here it would also be useful to refer to the observations of the Apex Court in the judgment in ***Medical Council of India vs State of Karnataka & Ors. (1998)6SCC131*** where the Court was dealing with the power of State of Karnataka to fix the admission capacity in the medical colleges of the State prior to the insertion of Section 10A, 10B and 10C in the Indian Medical Council Act, 1956. While deciding the said question, the Apex Court took a view that no medical college can admit any student in excess of its capacity fixed by the Medical Council, subject to any increase thereof as approved by the Central Government and that Section 10A, 10B and 10C will prevail over

Section 53(10) of the Karnataka Universities Act and Section 4(1)(b) of the said Capitation Fee Act. The following paras from the said judgment are reproduced as under:-

"The State Acts, namely, Karnataka Universities Act and Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the Regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to course for studies in a college and that number shall not exceed the intake fixed by the University or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its Regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education and over-seeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations Under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These Regulations are in considerable details. Teacher-student ratio prescribed is 1 to 10 exclusive of the professor or head of the department. Regulations further prescribe, apart from other tilings, that number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting Physicians/Surgeons of medical colleges and attached hospitals.

33. In the colleges in the State of Karnataka, the Medical Council prescribed the number of admissions that these colleges could take annually on the basis of these regulations. Without permission of the Medical Council, the number of admissions could not be more than that

prescribed at the time of granting recognition to the college. However, it appears that in violation of the provisions of the Medical Council Act, the universities and the State Government have been allowing increase in admission intake in the medical colleges in the State in total disregard of the regulations and rather in violation thereof. These medical colleges cannot admit students over and above the intake fixed by the Medical Council. These colleges have acted illegally in admitting more students than prescribed. Universities and the State Government had no authority to allow increase in the number of admissions in the medical colleges in the State. When regulations prescribed that number of teaching beds will have to be in the ratio of 7 beds per student admitted any increase in the number of admissions will have, corresponding increase in the teaching beds in the attached hospital. These regulations have been over-looked by the universities and the State Government in allowing admissions over and above that fixed by the Medical Council. Respondents have not produced any document to show that increase in admission capacity to medical colleges over that fixed by the Medical Council has any relation to the existence of relevant infrastructure in their respective colleges and that there is also corresponding increase in number of beds for students in the attached hospitals. Standards have been laid by the Medical Council, an expert body, for the purpose of imparting proper medical education and for maintaining uniform standards of medical education through out the country. Seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council.

34. A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and hospital attached to it has to be well equipped and teaching faculty and doctors have to be competent enough that when a medical student comes out he is perfect in the science of treatment of human being and is not found wanting in any way. Country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections [10A](#), [10B](#) and [10C](#) in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated September 29, 1993 (though the notification is dated September 20, 1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities) has to apply to the Central Government for the permission along with the permission of the State

Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognised by the Medical Council can so apply.

35. Having thus held that it is the Medical Council which can prescribe the number of students to be admitted in medical courses in a medical college or institution it is the Central Government alone which can direct increase in the number of admissions but only on the recommendation of the Medical Council. In our opinion, the learned single Judge was right in his view that no medical college can admit any student in excess of its admission capacity fixed by the Medical Council subject to any increase thereof as approved by the Central Government and that Sections [10A](#), [10B](#) and [10C](#) will prevail over Section 53(10) of the State Universities Act and Section 41(b) of the State Capitation Fee Act. To say that the number of students as permitted by the State Government and or University before June 1, 1992 could continue would be allowing an illegality to perpetuate for all time to come. The Division Bench, in our opinion, in the impugned judgment was not correct in holding that admission capacity for the purpose of increase or decrease in each of the medical colleges/institutions has got to be determined as on or before June 1, 1992 with reference to what had been fixed by the State Government or the admission capacity fixed by the medical colleges and not with reference to the minimum standard of education prescribed Under Section [19A](#) of the Medical Council Act which the Division Bench said were only recommendatory. Nivedita Jain's case does not say that all the regulations framed by the Medical Council with the previous approval of the Central Government are directory or mere recommendatory. It is not that only future admission will have to be regulated on the basis of capacity fixed or determined by the Medical Council. Plea of the State Government that power to regulate admission to medical colleges is prerogative of the State has to be rejected."

69. The aforesaid position with regard to the increase of the seats was prior to the supersession of the Medical Council of India and now with the Board of Governors in supersession of the Medical Council of India in place, there is no requirement either at the stage of opening of a new institute or at the stage of renewal or even at the stage of increase for the Council to make a

recommendation to the Central Government and it is thus Board of Governors in supersession only which is competent to take all such decisions. In *K.S. Bhoir (Supra)* also where the Apex Court was dealing with the decision taken by the Central Government rejecting the request of the State Government of Maharashtra granting one time increase in admission capacity in MBBS, BDS courses being run in various medical colleges located within the State, the Apex Court in the said judgment laid down the importance of medical colleges first satisfying the requirements of provisions of sub Section 7 of Section 10A envisaged under the regulations for the increase of their admission capacity, but while carrying out the discussion on the scheme of the Act and regulations, nowhere there is a reference to the pre-condition of a medical college reaching the stage of awarding MBBS degree for seeking increase in their intake capacity.

70. Hence, in the light of the aforesaid discussion, this Court, therefore, does not find any merit in the arguments of the counsel for the respondent that the petitioners were required to reach the stage of awarding the MBBS degree to qualify to seek increase in their admission capacity.

71. This Court also does not find any merit in the arguments raised by the counsel for the respondent that the said policy for non-granting increase without such a medical college reaching the stage of awarding of MBBS degree being followed for all these past years by itself has become a good practice acceptable in law. Both the counsel have not been able to place on record any judgment on this controversy which would mean that never before an occasion arose before any Court of law to test the scheme of the Act and regulations framed thereunder so far the issue of increase of seats is concerned. This Court cannot ascribe to the argument of counsel for the respondent that simply because the said policy was being followed for all these years the same should be accepted as such, although the same may not qualify the test of law.

72. Coming to the another argument of counsel for the respondent that in the absence of a challenge made by the petitioners to the said regulations, this Court would not interfere with the plain and simple language of the regulations or to strike down the same, there cannot be any quarrel with the abovesaid legal proposition canvassed by the counsel for the respondent and the same has also not been refuted by the counsel representing the petitioners and in fact the counsel representing the petitioners very candidly submitted

that they were not challenging the vires of any of the provisions of the Act or the regulations framed thereunder. This Court has merely in the present case interpreted the relevant provisions of the Act and the regulations framed thereunder in terms of the above discussion after analyzing the scheme of the Act. It is a settled principle of law that the interpretation of any Statute or any rules and regulations framed under the Statute must depend on its text and context. The regulations derive its strength and validity from the Statute whereunder they are framed and, therefore, the regulations need to be interpreted looking into the legislative intendment behind the scheme of the main Act or Statute. It is also well established that the intention of the legislature has to be gathered by reading the Statute as a whole and not by selective reading of the Statute. As would be seen from the above discussion this Court has not ventured into either “reading down” or “striking down” any of the provision of the Act or regulations framed thereunder. This Court has merely attempted to give a proper and plausible meaning to the relevant provisions of the Medical Council of India Act and applicable regulations to the controversy involved, looking into the entire scheme of the Act and intendment of the legislature so that the object of the Act and the regulations is properly and effectively achieved, without causing any

violence to the provisions of the Act and without ascribing any different meaning to the relevant expressions used in such provisions and regulations.

73. Dealing with the other argument of the counsel for the respondent that this Court while exercising judicial review will not embark upon the enquiry of whether a public policy is wise or better or whether a different policy would be fairer, wiser, scientific or more logical as held by the Apex Court in *Balco Employees Union Vs. UOI (supra)*. It is suffice to mention here that this Court has not adjudicated upon or even weighed that whether the policy envisaged under the Act is rational, wise or logical or whether a better policy could have been in place, but has in the right earnest, interpreted the regulations framed under the Act bringing to light the correct intendment and purpose and rational of the policy as would have been envisioned by the framers of the regulations.

74. Coming to the last limb of the argument of the counsel for the respondent that this Court, even if finds the petitioners to be eligible for the grant of increase of additional intake in their institutes will not exercise its jurisdiction on its own and will remand the matter back to the Statutory Body for decision. The contention of the counsel

for the respondent was that the Hon'ble Apex Court in the case of *A.P. Christians Medical Educational Society (supra)* has deprecated such a practice of the High Courts to grant such reliefs and has left the matters to be decided by the Statutory Bodies alone. Mr. Maninder Singh, Senior Advocate for the petitioner on the other hand placed reliance on the judgment of the Apex Court in the case of *Comptroller and Auditor-General of India Vs. K.S.Jagannathan & Anr. (supra)*, *Secretary, Cannanore District Muslim Educational Association vs. State of Kerala & Ors. (supra)*, *Al- Karim Educational Trust Vs. State of Bihar (supra)*, and of this Court in *Integrated Education Development vs. UOI (supra)*, and judgments of various other High Courts to support his contention that in order to prevent injustice this Court can pass an order or give direction which the Government or public authority should have passed or given had it properly and lawfully exercised its discretion. Counsel also submitted that in *Integrated Education Development* case, this Court had given the directions for granting recognition to a new Dental college ignoring the existence of minor deficiencies in the said college. It is inevitable that the aforesaid decisions by the Hon'ble Supreme Court of India and other High Courts have been given depending upon the facts of the case before them. It is a settled legal position that every case has

to be decided peculiar to its own facts and the ratio of one case cannot be applied like a lucid theorem to the other unless the facts of the case in hand, if not exactly, but substantially deals with the same situation. In *Comptroller and Auditor-General of India* case, the Apex Court referred Halsbury's Laws of England 4th Edn. and quoted with approval the following passage dealing with the efficacy of mandamus and the same is reproduced as under:-

"In Halsbury's Laws of England, 4th Edn., vol. I, para 89, it is stated that the purpose of an order of mandamus

"is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

75. The Apex Court further referred to Merrill on mandamus and observed that it would be a monstrous absurdity if in a well organized Government, no remedy is provided to a person who has a clear and undeniable right. It was also observed that where a man has a jus ad rem (a right to a thing) it will be "absurd, ridiculous and shame to the law, if courts have no remedy and the only remedy he can have is by mandamus".

76. The petitioners before this Court are seeking increase in additional intake and it is not in dispute that for seeking the said

increase they had applied within the stipulated time as prescribed in the regulations. The increase in additional intake to these petitioners was not granted by the respondent MCI only because they were found ineligible to qualify to apply for such increase in their admission capacity. The parties are well aware that 30th September, 2011 is the dead line for admissions in the MBBS course and if these matters are remanded back to the respondent as per submission of the counsel for the respondent then these petitions will become infructuous despite the decision of this Court in their favour. The Writ Court, thus, in exercise of its plenary and extraordinary powers can give appropriate directions whenever and wherever the ends of justice so demand in the given fact situations. The respondent MCI is accordingly directed to grant increase in the additional intake of students from 100 to 150 to all these petitioners institutes subject to, however, the condition that these petitioners fulfill all other requirements and the criteria laid down in the regulations and there being no deficiencies existing for granting the said increased intake in the admission capacity from 100 to 150 students in the MBBS course.

77. At omega, this Court would like to give its observations on the larger issue of the medical education in the country. The doctors of our country are the cynosures of the medical fraternity of the world

and for making them a sought after lot, the privatization of the medical education became the need of the hour. But it is a hard hitting reality that this edu-business, as it is now popularly called, has led to the growing merchandising of the medical education, blurring the benefits of privatization and entering the realm of proliferation. This sudden spurt has no doubt contributed to the declining standards of the medical education, with more money being pumped in by charging higher fees but the infrastructure and facilities, more importantly, faculty, is dwindling and inadequate. The mushrooming and setting of medical shops has been in the news quite often leading to the scrapping of the Apex Regulatory body like the MCI due to its tainted practices, the natural corollary of which being more stringent rules and regulations appearing on the statute book and like in the present case, more rigorous interpretations of the regulations being sought in the wake of the regulatory checks and monitoring of the private colleges. There is no two way about the fact that there are colleges which are set up only for the purpose of minting and raking in the moolah, appointing rogue doctors at the time of inspections, an emergency like frenzy for the show day, window dressing, etc but the crucial question is that is it a reason enough to look at all the private colleges through the prism of incertitude.

78. There were only 19 medical colleges in the country at the time of independence and today the number of colleges imparting MBBS education is almost 335. It is indeed a significant rise which should be the sign of the progress and growth of a nation, especially like ours, with a burgeoning population, but whether the increased numbers means higher health care delivery system is still debatable as the number crunching has another story to tell. As per the recent published reports, India ranks 67th in the list of 133 developing countries with the doctor-population ratio at 1:1700 as compared to the world ratio which is 1.5:1000. The WHO target is to achieve the ratio of 1:1000, which India will be able to do only till 2031 with the existing colleges and state of affairs and it is estimated that there will be still a shortage of 9.54 lakh doctors till then. With the government colleges share being less and the private colleges shouldering more responsibility, there is still approximately only 1 medical college per 38.41 lakh, dismal figures which reflect the acute crisis in the country. The MCI received 104 applications this year for the increase of admission capacity out of which 43 were disapproved on scrutiny, 61 inspected and 33 approved, out of which 18 were in private sector. With the panoramic view of the above statistics, the inevitable

conclusion is that the private colleges are the harbingers of hope for the dreaming and yearning India.

79. The privatization of medical education was aimed at reversing the notion of higher education being the prerogative of the rich and making it universal and attainable. The additional numbers would bring glory if they go through the highest standard of education and training and bridge the gap in the health services in the urban and rural areas. To achieve a balance, between the unprecedented institutional growth today vis a vis skewed doctor-patient ratio, the only solution is to review the entire regulatory mechanism and revitalize the system of checks before this aberration of rot becomes a trend in the country. The MCI requirements for setting up medical colleges focus more on infrastructure and human resources required and less on process and quality of education, with the information sought only from the college administration and not from students, faculty or patients and it is time that the regulations be focused more to foster true medical education and producing a competent cadre of doctors rather than just more number of doctors. It is a national quality challenge and the time for the MCI/BOG to be vigilant and reinvigorate the system to stop the unplanned and unequal growth of mediocre colleges aimed at commercialization of medical education,

rather than stop the growth of colleges catering to the needs of the aspirant doctors by giving lopsided interpretations to the regulations. The health care sector cannot be allowed to suffer a trust deficit, and it is time the trust of the common man in the custodians of our health is rejuvenated and strengthened, and that can only be done by monitoring the quality of medical education in the country more stringently by the MCI. It is the time of perils to be addressed before we lose the cutting edge in global healthcare and education.

80. With the above directions, the present petitions are allowed leaving the parties to bear their own costs.

KAILASH GAMBHIR, J

September 28, 2011