

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 10th October, 2011
Judgment Pronounced on: 13th October, 2011

+ LPA 819/2011

MEDICAL COUNCIL OF INDIA Appellant
Through: Mr.Nidhesh Gupta, Sr.Advocate
with Mr.Amit Kumar and Mr.Ashish
Kumar, Advocates

versus

TEERTHANKER MAHAVEER INSTT OF
MANAGEMENT & ANR Respondents
Through: Mr.Maninder Singh, Sr.Advocate
with Mr.Gaurav Sharma, Advocate

LPA 820/2011

MEDICAL COUNCIL OF INDIA Appellant
Through: Mr.Nidhesh Gupta, Sr.Advocate
with Mr.Amit Kumar and Mr.Ashish
Kumar, Advocates

versus

RAMA MEDICAL COLLEGE HOSPITAL
& RESEARCH CENTRE KANPUR & ANR Respondents
Through: Mr.Neeraj Shekhar and
Mr.Ashutosh Thakur, Advocates for
R-1
Mr.Ravinder Aggarwal, Advocate
for R-2

LPA 816/2011

BOARD OF GOVERNORS IN SUPERSESSION
OF MEDICAL COUNCIL OF INDIA Appellant

Through: Mr.Nidhesh Gupta, Sr.Advocate
with Mr.Amit Kumar and Mr.Ashish
Kumar, Advocates

versus

SCHOOL OF MEDICAL SCIENCES &
RESEARCH SHARDA EDUCATION TRUST Respondents

Through: Mr.J.P.Sengh, Sr.Advocate with
Mr.Ranjan Kumar Pandey,
Mr.K.P.Gautam and Ms.Ankita
Gupta, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

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

PRADEEP NANDRAJOG, J.

1. Whether Regulation 3(I) in Part II of '*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*' (hereinafter referred to as 'Regulations 2000') bars a college/institution running Bachelor of Medicine or Bachelor of Surgery Course, to seek increase of seats till recognition is obtained by the institution or college as per the requirement of Sub-Section 1 of Section 11 of the Indian Medical Council Act 1956 is the principal question which arose for consideration before the learned Single Judge and the answer being in favour of the writ petitioners, the Board of Governors, in supersession of Medical Council of India, have

filed the above captioned appeals, pleading that the view taken by the learned Single Judge is incorrect. A subsidiary question pertaining to the mandamus issued by the learned Single Judge also arises for consideration i.e. if the view taken by the learned Single Judge pertaining to question No.1 is correct: Whether the learned Single Judge could have issued the mandamus to increase the seats in the medical colleges which were the writ petitioners before the learned Single Judge.

2. The impugned judgment spans 110 pages, but we intend to be brief.

3. The legislative field in which the principal question has to be answered, is Section 10A, Section 10B and Section 11 of the Indian Medical Council Act 1956 and Regulation 3(I) of the Regulations 2000.

4. By way of a preliminary statement it needs to be highlighted that with the promulgation of 'The Indian Medical Council (Amendment) Act 2010', with effect from 4th September 2010, Section 3(A), 3(B) and 3(C) have been inserted in the Indian Medical Council Act 1956 and the effect thereof is that the Indian Medical Council constituted under the 1956 Act stands superseded by a 'Board of Governors' and the word 'Council' in the 1956 Act stand superseded by the expression 'Board of Governors'. Another change brought about is that power of the Central Government under Section 10A of the 1956 Act has been vested in the 'Board of Governors'.

5. With a view to regulate not only the practice of medicine profession in India but even medical education in India, the Indian Medical Council Act 1956 was promulgated.

The Act was amended from time to time and as amended till today, pertaining to permission for establishing a new medical college or a new course of study in an existing medical college, which area would cover the admission capacity in a course of study, the legislative field is occupied by Section 10A of the Indian Medical Council Act 1956 which reads 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 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 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 subsection (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.

6. A perusal of Section 10A would make it self-evident that no medical college shall be established and no existing medical college can open a new or a higher course of study or increase its admission capacity in any course of study without the permission of the Central Government and that permission has to be sought by submitting a scheme which has to be first considered by the Medical Council of India and now the 'Board of Governors' and if the recommendation is favourable the Central Government grants the necessary permission to establish a new medical college or increase the admission capacity in an existing medical college or grant permission to start a new or a higher course of study in an existing medical

college. We highlight that as a result of insertion of Section 3A, 3B and 3C in the Act by way of amendment in the year 2010 the said power is now vested in the 'Board of Governors'.

7. The effect of non-compliance with Section 10A is provided for in Section 10B. We note the same. It reads as under:-

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 recognized medical qualification for the purposes of this Act.

8. A perusal of Section 10B would reveal that non-compliance of Section 10A results in the non-recognition of the medical qualification. Pertaining to increase in admission

capacity in any course of study, Sub-Section 3 of Section 10A makes it clear that medical qualification granted to a student on the basis of increase in the admission capacity would not be recognized if increase in the admission capacity in an existing course is not obtained from the Central Government, now the Board of Governors.

9. The legislative field pertaining to recognition granted to a university or a medical institute in India to award degrees of medical qualifications is governed by Section 11 of the Indian Medical Council Act 1956. We note Section 11. It reads as under:-

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.

10. The Medical Council of India '*Establishment of Medical College Regulations 1999*' are also relevant inasmuch as the period interregnum permission granted to open a new

medical college or commence a new course of study as per Section 10A till the time the institute is recognized to award a degree is dealt with by the Regulations of 1999 and being relevant, Regulation 8 thereof needs to be noted. It reads as under:-

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.

11. Learned senior counsel for the appellant and the contesting respondents were not in disagreement that a co-joint reading of Section 10A, 10B and 11 of the Indian Medical Council Act 1956 read with Regulation 8 of the 1999 Regulations clearly envisage that permission accorded to establish a new medical college or introduce a new course of study in an existing medical college is distinct from a recognition granted to an institute to award medical qualifications as per Section 11 and that the scheme of the Act and Regulations envisage that initial permission granted under Section 10A has to be renewed on yearly basis till such time the institute is recognized to grant a medical degree.

12. Thus, for all purposes, the Act and the Regulations contemplate two kinds of recognitions. One may be called a transient recognition on year to year basis under Section 10A, and a permanent recognition under Section 11 and needless to state since a Bachelor's Degree in Medicines spans a course study period of 5 years, a new medical college would have a transient recognition, on year to year basis, for a period of 5 years and only when the first batch of students reaches the stage in the 5th year to obtain a degree, would the issue of grant of permanent recognition to the institute/college become

relevant; and needless to state if it is found that the college/institute concerned has successfully run the course for 5 years, the institute/college is permanently recognized and hence empowered to confer the degree.

13. What happens if a medical college having obtained a recognition as per Section 11 or a recognition to run a course as per Section 10A needs to increase its admission capacity?

14. '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 Postgraduate Course of Study or Training) Regulations, 2000' come into play.

15. Part I of the Regulations deals with the scheme pertaining to the permission to open a new or a higher course of study or training in a Medical College and Part II thereof deals with a scheme for permission to increase the admission capacity in any course of study or training in an existing medical college. Regulation 3 under Part II reads as under:-

"3. QUALIFICATION CRITERIA:-

The medical college/institution shall qualify to apply for increasing the number of admission in MBBS/PG Diploma/Degree/Higher Specialty Course in the existing medical college/institution if the following conditions are fulfilled:-

(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; 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 increase of intake in Post Graduate Courses in pre-clinical and para-clinical subjects of Anatomy, Physiology,

Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine & Community Medicine at the time of 4th renewal i.e. along with the admission of 5th Batch for the MBBS Course.

Or

Medical College/Institution has received the formal permission of the Central Government under Section 10A of the Indian Medical Council Act, 1956 (102 of 1956) and has started the post-graduate course in which the increase in admission capacity is sought.

2. The permission letter regarding desirability and feasibility of having an increase of seats in the existing medical college/institution for aforesaid Courses has been obtained by the applicant from the respective State Government or the Union Territory Administration.

3. Letter of University's permission for increasing the admission capacity in any course of study or training (including a postgraduate course of study or training) in seats in the existing medical college/institution has been obtained by the medical college/institution from the university to which it is affiliated."

16. As noted hereinabove, by virtue of the insertion of Section 3A, 3B and 3C, the permission to be obtained from the Central Government under Section 10A has not to be obtained from the Board of Governors.

17. It is time to deal into the meat of the matter. The dispute is on the language of Regulation 3(1) of '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 Postgraduate Course of Study or Training) Regulations, 2000’.

18. But a fact needs to be noted. The 3 writ petitioners obtained a permission to open medical colleges and pertaining to the MBBS course, were sanctioned an admission capacity of 100 seats each. Not having completed 5 years’ teaching, but having applied for and obtained the yearly renewal each year, not having reached the stage of being eligible to be granted a recognition as contemplated by Section 11, the 3 writ petitioners applied for an increase in the admission capacity by 50 seats each i.e. to have an intake of 150 students in the first year of its study for the current academic year i.e. the year 2011-2012.

19. The scheme submitted to the Board of Governors was not rejected on the ground that the applications were premature. The applications were not rejected by taking a position that unless the institute/colleges obtained a recognition under Section 11, they were not even entitled to be considered for an increase in the admission capacity. An inspecting team was constituted which inspected the facilities available and with some hiccups, found that the 3 institutes have the requisite infrastructure and capacity to increase the seats by 50 i.e. to have a student intake of 150 students and thus made a positive recommendation qua all the 3 institutes.

20. The Board of Governors turned down the request taking the position that Regulation 3(1) of ‘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 Postgraduate Course of Study or Training)

Regulations, 2000' stipulated that the qua non for entitlement to increase in the admission capacity was that the college/institution must be recognized by the Central Government as per Section 11 of the Indian Medical Council Act 1956 and since the 3 writ petitioners had yet to reach the stage when they could seek a recognition under Section 11, the applications were premature.

21. We have noted hereinabove in para 15 the Regulation on which the forensic debate took place at the bar and would highlight that the expression used is '*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*'.

22. Whereas the appellants would urge that the word '*recognized*' in the Regulation means a recognition as contemplated by Section 11 and would urge that what is contemplated by Section 10A is the permission to start a medical college or a course in an existing college, the legislative intent in not using the word '*permission*' but the word '*recognition*' in the Regulation in question makes it clear that till an existing medical college/institution had obtained a recognition contemplated by Section 11, merely because it had a permission under Section 10A, would not even entitle the college/institution to apply for an increase in the admission capacity of the college/institution.

23. The contra argument advanced by the 3 institutes is that if the Regulation had contemplated, as was urged by the Board of Governors, the legislature would not have used the expression '*Medical Council of India*' in the Regulation in question for the reason the recognition granted under Section

11 is by the Central Government and not by the Medical Council of India. Extending the argument it was urged that it was apparent that the word '*recognized*' in the Regulation was used as a synonym with the word '*permission*', for the reason with reference to the word '*permission*' the Act contemplated the role of Medical Council of India inasmuch as Section 10A prohibited running of a course in medicine without the permission of the Central Government, which permission was contingent upon the inspection and permission by the Medical Council of India and that the recognition contemplated by Section 11 pertained to the award of a degree.

24. It is apparent that he who drafted Regulation 3(1) of the 2000 Regulations has not done a good job. The Act does not contemplate any recognition to be accorded by the Medical Council of India; the Act only contemplates the recommendatory role of the Medical Council of India as it was originally enacted and only now by virtue of the amendment in the year 2010 the power of the Council on being vested in the Board of Governors grants a power to the Board of Governors to accord permission to establish a new medical college or increase the admission capacity in a course of study in a medical college. We highlight that when the Regulations of 2000 were framed, it was not known that in the year 2010, the Act would be amended. It strikes he who peruses the Regulation, that the expression '*recognized by the Medical Council of India*' has a complete disconnect vis-à-vis the scheme of the Act.

25. Now, if the interpretation by the appellant is to be accepted, the expression '*recognized by the Medical Council of India*' would have to be read as '*recognized by the Central*

Government'. But if the interpretation by the respondents is accepted, it would not require the substitution of the word '*permission*' by the word '*recognized*' for the reason we find that the legislative field under Section 10A, with reference to permission to start a medical college or a new course with a sanctioned admission capacity is in the nature of a recognition and the recognition contemplated by Section 11 is a '*formal recognition*'. We take sustenance from the language of Regulation 8 of the 1999 Regulations, which has been noted by us in para 10 above.

26. We highlight the use of the expression '*formal recognition*' in sub-Regulation 3 of Regulation 8 of the 1999 Regulations.

27. The said expression used in the said Regulation shows that the legislature, with reference to grant of permission contemplated by Section 10A recognizes that said permission granted would be akin to an ad-hoc recognition and that the formal recognition would be the one which is contemplated by Section 11 of the Act.

28. The matter can be looked at a little differently. The Regulation in question does not say that the medical college/institution must be recognized by the Medical Council of India for awarding a Bachelor of Medicine or a Bachelor of Surgery Course. It uses the expression '*running Bachelor of Medicine and Bachelor of Surgery Course*'.

29. It is plain evident that once a permission/recognition is granted under Section 10A it authorizes the grantee the permission to run a course. This interpretation is further strengthened by the latter expression

in Regulation 3(1) after the word '*however*'. The clause in question can be split into two parts:

(a) 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;

however

(b) The medical college/institute which is not yet recognized by the Medical Council of India for the award of MBBS degree may apply for increase of intake in Post Graduate Courses in pre-clinical and para-clinical subjects of Anatomy, Physiology, Biochemistry, Pharmacology, Pathology, Microbiology, Forensic Medicine & Community Medicine at the time of 4th renewal i.e. along with the admission of 5th Batch for the MBBS Course.

30. The first part of the Regulation is not circumscribed by any limitations as is the second part and relevant would it be to note that it is the second part which circumscribes the time within which it would be impermissible to seek increase in the admission capacity but only pertaining to post-graduate courses. The first part of the regulation has no such limitation.

31. Thus, we concur with the reasoning of the learned Single Judge that the regulation does not contemplate that a college must be recognized to award degrees i.e. it does not contemplate a recognition under Section 11 of the Indian Medical Council Act 1956 and that it is permissible for a college to seek increase in the admission capacity even at the stage it has the permission/recognition under Section 10A. It is settled law that if two interpretations, one which expands a right to apply and the other which restricts the right to apply

are possible, law leans in favour of the former and not the latter.

32. Thus, we answer the first question against the appellant and in favour of the respondents.

33. On the second question, the learned Single Judge has held that on the strength of the judgments reported as 1986 (2) SCC 679 Comptroller and Auditor General of India Vs. K.S.Jagannathan & Anr. and 2010 (6) SCC 373 Secretary Cannanore District Muslim Educational Association Vs. State of Kerala & Ors., in an extraordinary case the Court may itself pass an order or give directions which the Government or public authority should have passed or issued. So holding the learned Single Judge has issued a mandamus increasing the admission capacity pertaining to MBBS Course from 100 to 150 seats in each of the 3 colleges. The reason given by the learned Single Judge is that in view of the directions issued by the Supreme Court, admissions in medical colleges have to close by 30th September each year. The decision has been pronounced on 28th September 2011 and thus the justification for increasing the seats.

34. The two decisions relied upon by the learned Single Judge, no doubt hold that in an exceptional case the Court can itself issue the order or direction which ought to have been issued by the Government or the statutory authority, but it would be necessary for us to highlight that in those cases, as indeed in all others where the Courts had themselves issued directions, were cases where the competent authority had considered the matter on merits and on a wrong reasoning of law or fact had passed an order which was found to be tainted in law and the legal reasoning or the correct fact noted by the

Court resulted in the only situation remaining, being that of relief being granted and not that after removing a taint which was found in the existing decision making process, the matter needed a further reconsideration with reference to the remainder. These were cases where the inevitable conclusion stared the Court in its face and thus after frowning upon the tainted decision taken, removing the frown, the face smile and hence the direction.

35. But, the normal rule of law is that where a taint takes place in a decision making process, this is the stage where the matter gets derailed and thus the requirement of removing the taint and putting the matter back on the track for the onward journey to be undertaken.

36. In the instant case the inspecting committee had made favourable recommendations. The Board of Governors had yet to apply themselves to the reports submitted and take a decision on merits. Wrongly advised that the applications were premature, the Board of Governors turned down the applications and this has been found to be tainted by the learned Single Judge, which view has been accepted by us and thus the facts of the instant case do not warrant the direction as made to be issued. The corrective course warranted is to give a direction to the Board of Governors to consider the inspection reports and such other relevant material and take a decision on merits whether or not the admission capacity has to be increased. Thus, upholding the view taken by the learned Single Judge that the rejections were wrong, we set aside the direction issued by the learned Single Judge in para 76 of the impugned decision, which direction we find has an inbuilt contradiction. The direction is to grant increase in the

intake of students from 100 to 150, which is immediately hedged with the condition that the writ petitioners should fulfill all other requirements and the criteria laid down in the Regulations and that there are no deficiencies existing for granting the said increase. Is it that the direction issued in the first part of the concluding sentence of paragraph 76 is absolute or is it that the direction is to treat the writ petitioners entitled to seek an increase in the admission capacity and thus requiring the respondents to see whether the requisite criteria is met?

37. We clarify that the mandamus issued would be read as a declaration of the entitlement of the writ petitioners to seek increase in the admission capacity from 100 seats to 150 seats in the MBBS course run by them coupled with a direction that the Board of Governors would process the matter further with reference to the inspection reports and such other relevant matters and take a final decision. So clarifying/correcting the impugned decision, we require the Board of Governors to take a final decision on merits within a week from today by treating the writ petitioners eligible to seek enhancement of seats from 100 to 150 in the MBBS Course pertaining to the current academic year and if it is found that the writ petitioners are entitled to increase the seats in view of they having met the requisite criteria in terms of infrastructure etc. to pass the necessary orders. However, the respondents would not proceed to go ahead with any counseling and fill up the seats in view of the fact the Supreme Court has prohibited any admission to an MBBS Course after 30th September each year and for which we observe that the respondents would be entitled to student counseling only if

they obtain permission from the Supreme Court to admit further students in the current year. If such permission is not granted by the Supreme Court, the decision, if favourable to the respondents would be treated as a permission to have an intake of 50 additional students in the next academic year i.e. the academic year 2012-2013.

38. Appeals stand disposed of as above.

39. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

OCTOBER 13, 2011
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