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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4491/2012

% **Judgment dated 11.09.2012**

TAGORE MEDICAL COLLEGE AND HOSPITAL Petitioner
Through: Mr. Amit S. Chadha, Sr. Adv. with Mr. Kunal,
Ms.Jaikriti S. Jadeja, Mr.K.V. Babu and
Mr.Balaji Srinivasan, Advocates

versus

BOARD AOF GOVERNORS IN SUPERSESSION OF
MEDICAL COUNCIL OF INDIA Respondent
Through: Mr. Ashish Kumar and Mr. Ankit, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. The petitioner has approached this Court seeking a writ of mandamus to quash the impugned order dated 28.6.2012 by which the grant of renewal of the petitioner institute has been rejected. The petitioner also seeks a writ of mandamus directing respondent to grant second renewal for admission of its third batch of 150 MBBS students for the academic year 2012-2013.
2. It is the case of the petitioner that the order dated 28.6.2012 passed by respondent, rejecting the grant of renewal of petitioner institute, is illegal, arbitrary and has been passed without any application of mind.
3. According to the petition, the petitioner institute was established in the year 2010 under Section 10A of the Indian Medical Council Act, 1956. The petitioner institute has been affiliated to Dr.M.G.R. Medical University, Chinnai, and 65% of the seats in the petitioner institute is filled up by the Government of Tamil Nadu through counseling and the

remaining 35% of the seats in the petitioner institute is filled up by the Consortium monitored by a retired Judge of High Court of Madras. The petitioner institute had applied for the first renewal for the academic year 2011-2012 and the assessment report dated 28.2.2011 for the second batch of 150 admission was made in favour of the petitioner. The first renewal of admission for the second batch of 150 MBBS students for the academic year 2011-2012 was accorded by the Board of Governors on 28.6.2011. The petitioner applied to the respondent for the second renewal for admission of third batch of 150 students for the academic year 2012-2013 on 22.12.2011. Respondent vide letter dated 13.2.2012 appointed Inspectors for assessment of the physical and other teaching facilities for renewal. After inspection respondent issued an assessment report dated 17/18.2.2012. After a gap of three months the respondent issued a deficiency report dated 26.5.2012 wherein the following deficiencies were pointed out:

- “1. Hostel Accommodation is available only for 336 students instead of 339 students.
 2. There is shortage of one bed in Psychiatry.
 3. There is shortage of 02 labs in Physiology.
 4. No Mess & Accommodation facility in RHTC.
 5. Information of regarding staff, nurses, students and residents contradictory in form & Assessor’s Report.
 6. Other deficiencies as indicated in the assessment report.”
4. It is the case of the petitioner that the above deficiencies were imaginary as the petitioner has all the facilities as per the applicable norms and the assessor’s form did not have any column stating requirements for quarters of staff and students and hence the information was not entered into for the assessment. As required the petitioner institute submitted a

compliance/clarification report in respect of the said deficiencies on 2.6.2012. A copy of the letter dated 2.6.2012 was handed over in person on 4.6.2012. Subsequently terms of reference were issued by respondent to two Inspectors to verify the deficiencies raised in the earlier assessment dated 17th and 18th February, 2012. The letter containing the terms of reference was handed over by the Inspectors on 16.6.2012, when a surprise inspection was undertaken by the Assessors. Consequent to the inspection a compliance verification inspection report was issued by respondent on 26.6.2012. As per the compliance verification assessment report fresh deficiencies were pointed out including deficiencies in size of rooms in the boy's and girl's hostel; accommodation available for teaching staff quarters was short by two apartments; accommodation for nursing staff short by 16; there was no provision for cooler/fans in patients' waiting area; inadequate OPD area; deficiency of the faculty in the General Medicine Department; ICU, RICU, CICU, GICTU and SICU were not being fully equipped. A detailed reply to the report was submitted by the petitioner on 27.6.2012 wherein the deficiencies were clarified and explained by the petitioner. Being dissatisfied with the clarification so rendered by the petitioner, the impugned order dated 29.6.2012 has been passed by the respondent.

5. Aggrieved by the order of rejection, the petitioner filed W.P.(C) 3845/2012. Notice was issued. Subsequently the petitioner sought to withdraw the writ petition in view of the judgment passed by the Supreme Court in the case of *Priya Gupta v. State of Chattisgarh & Ors*, C.A. 4318-19/2012, wherein it has been held that the last date for Medical Council of India to give recommendation to the Central Government for renewal of permission for fresh admissions shall be 15.6.2012 and the last date for Central Government to issue letter of permission will be

15.7.2012. As prayed the said writ petition was dismissed on 10.7.2012. The petitioner thereafter approached the Supreme Court of India by filing W.P.No.280/2012. The Supreme Court of India directed the petitioner to approach the High Court, which has led to the filing of the present writ petition, which was listed on 30.7.2012. Subsequently the petitioner filed CM 10062/2012 seeking leave of this Court to place on record additional grounds.

6. It is submitted by Mr.Amit S. Chadha, learned senior counsel for the petitioner, that the grant of second renewal has been rejected for the reasons which were not part of the assessment report. The order of rejection has been passed without application of mind. The impugned order is casual in nature and in violation of the very object of providing annual renewal of permission and would cause serious disruption in the functioning of the petitioner institute. It is strongly urged before this Court by Mr.Chadha that the respondent has violated the principles of natural justice as the compliance verification assessment report which forms the basis of rejection was not supplied to the petitioner. It has been further urged before this Court that the order of rejection is based on irrelevant material that is the compliance verification assessment report, which is not an assessment report. It is next contended by Mr.Chadha that pursuant to the application for second renewal for admission of third batch of 150 students respondent appointed three Professors as Assessors for physical assessment of the college premises on 13.2.2012. Relying on the Assessors guide learned senior counsel for the petitioner submits that four Professors are required to carry out inspection for establishment of a new medical college/increase intake of 200/250 and for recognition while three Professors are required for all other assessments. Attention of this court is drawn to the assessment report pursuant to the inspection carried out on

17th and 18th February, 2012, wherein no deficiencies were pointed out except that there was non-availability of CT Scan which according to the petitioner is required only after fourth renewal. It is further contended by learned senior counsel for the petitioner that on 26.5.2012 after a gap of three months the respondents issued a deficiency report pointing out six deficiencies.

7. Learned counsel for the petitioner submits that although six deficiencies were pointed out none of the six deficiencies have been considered for the ultimate rejection by the impugned order of 28.6.2012. On 2.6.2012 petitioner submitted a compliance report to the respondent with respect to the deficiency report of 26.5.2012. In June, 2012, two Professors as against the requirement of three Professors, as per the MCI Assessor's Guide, were appointed as per the terms of reference therein to verify the compliance of deficiencies raised in the assessment report dated 17th and 18th February, 2012 and the compliance verification assessment report of 16.6.2012. According to the petitioner this communication pointed out ten fresh deficiencies and did not make mention of earlier six deficiencies which would mean that the respondent was satisfied that the earlier deficiencies stood cured.
8. It is the case of the petitioner that compliance verification assessment report was not supplied to the petitioner, however, a personal hearing was fixed on 28.6.2012.
9. Learned senior counsel for the petitioner submits that reliance by the Board of Governors in the impugned order on the compliance verification assessment report is misplaced for the reason that it was not an assessment report. Even otherwise the compliance verification assessment report was only to verify the compliance of deficiencies pointed out in the Assessors report. Senior counsel further submits that there is a clear violation of the

mandate by the assessors, which was only limited to verify whether the compliance had been made of the earlier deficiencies and their report could not have become a fresh assessment report since the Assessors report has to be on the basis of inspection by three Professors and not by two professors, as per the Assessors guide. Elaborating his arguments further that no reliance can be placed on the report dated 03.07.2012, Mr.Chadha contends that the Assessors report is to be signed by the Dean/Principal as per the Assessors Guide of MCI and the report dated 17th and 18th February, 2012 was signed in the case of the petitioner, however, the compliance verification assessment report does not bear the signature of Dean/Principal on each page. It is also alleged that no copy of the compliance verification assessment report dated 16.6.2012 was served on the petitioner for compliance prior to passing of the impugned order dated 28.6.2012. It is also submitted that the petitioner received a physical copy of the communication dated 26.6.2012 along with the copy of the compliance verification assessment report on 3.7.2012, which is not denied by the respondent. It is also contended that in the absence of the report the petitioner was put to a disadvantage as no time was available to the petitioner to either render an explanation or to comply with the deficiencies. It is next submitted that the object of timely completion of inspection and verification process is to give adequate and reasonable time to the colleges/institutions to cure the deficiencies or to render its explanation. Besides the object of annual renewal of the premises is to ensure fulfillment of requirements in a gradual manner and not to cause any disruption. Reliance is placed by the senior counsel for the petitioner in the case of *Priyadarshini Dental College and Hospital v. Union of India & Others*, reported at (2011) 4 SCC 623, more particularly paras 23 and 25, which read as under:

“23. In all these cases, the petitioners, who were applicants for renewal were existing dental colleges, were functioning for three or four years and each college had admitted hundreds of students either directly or through State Government allotment. The colleges had the benefit of initial permission and several renewals of permission. Refusal of renewal of permission in such cases should not be abrupt nor for insignificant or technical violations. Nor should such applications be dealt in a casual manner, by either granting less than a week for setting right the 'deficiencies' or not granting an effective hearing before refusal. The entire process of verification and inspection relating to renewal of permission, should be done well in time so that such existing colleges have adequate and reasonable time to set right the deficiencies or offer explanations to the deficiencies. The object of providing for annual renewal of permissions for four years, is to ensure that the infrastructural and faculty requirements are fulfilled in a gradual manner, and not to cause disruption.

24. In the context of what has happened in these cases, it is necessary to emphasize the distinction between the applications for fresh permissions and applications for renewal of permissions. They require distinct time schedules. The process of decision making under the Regulations, for grant of fresh or initial permission for establishment of new dental colleges is exhaustive and elaborate, when compared to the process of decision making in regard to grant of renewal of permission for the four subsequent years. Before grant of initial grant of permission, the DCI and Central Government are required to consider the following aspects : whether the institution would be in a position to offer the minimum standards of dental education in conformity with the Act and the Regulations; whether the institution has adequate resources; whether the institution has provided or will provide within the time-limit specified in the scheme, necessary staff, equipment, accommodation, training and other facilities to ensure proper functioning of the institution; whether the institution has provided or would provide within the time-limit specified in the scheme, adequate hospital facilities; whether faculty having recognized dental qualifications and personnel in the field of practice of dentistry will be available to impart proper training for the students; and whether other factors prescribed by the Regulations have been complied. On

the other hand, for the purpose of grant of renewal of permission, DCI has to make recommendations by considering only whether the prescribed faculty and infrastructure are available.

25. The need for renewal of permission emanates from the fact that a newly established college is not required to have in place, full complement of the teaching faculty and complete infrastructure in the first year itself. This is because, during the first year, the college will be catering only to a limited number of first year students. During the second, third and fourth and fifth years, the student strength will increase. If the permitted intake is 100, usually there will be 100 students in the first year, 200 students in the second year, 300 students in the third year, 400 students in the fourth year and 500 students in the fifth year. Thereafter, the strength may remain constant. As the strength increases gradually every year, correspondingly the infrastructure and faculty will have to be increased.”

10. It is further submitted by learned senior counsel for the petitioner that the impugned order dated 28.6.2012 has primarily been passed on account of deficiency in faculty and deficiency in clinical material. It is argued before this Court that none of the above two reasons form a part of the assessment report dated 17th and 18th February, 2012, or the deficiency report of 26.5.2012. Although a mention was made in the show cause notice dated 26.6.2012 of gross deficiency in faculty of General Medicine and General Surgery, however, in the reply of 27.6.2012 an affidavit was submitted in respect of the Department of General Medicine and General Surgery. Reliance is also placed by learned senior counsel for the petitioner on the application, being CM 10062/2012, filed by the petitioner to raise additional grounds wherein the issue with regard to deficiency in faculty and issue with regard to General Medicine Department have been addressed. The names, designation, date of appointment, experience at petitioner institute have been disclosed.

Similar details have been furnished by the petitioner with regard to the General Surgery Department. Details of joining report, salary certificate, vouchers of June 2012, identity cards have been annexed along with the application. As far as the deficiency in the clinical material is concerned, it is explained that the same was never found to be deficient even as per the first assessment report dated 17th and 18th February, 2012, as also in the deficiency report dated 26.5.2012 and, thus, the subsequent finding of deficiency is contrary to the respondent's earlier assessment. The explanation rendered for various shortages, learned senior counsel for the petitioner submits that Assessors carried out inspection only on the ground floor and the first floor whereas each floor consists of several departments and wards in the second floor, General Medicine Ward and in the third floor General Surgery Ward is located. The Assessor did not inspect the hospital as well as the institute on 16.6.2012. Copy of the log book for the said date has been filed along with the application in support of the plea that perusal of the log book would show that individual Clinical Material was available on the particular date. It is also contended that the waiting area of the OPD is 4099 sq. ft. and there are 11 OPDs on the ground floor and 18 OPDs on the first floor with a total built up area of 21800 sq. ft., which is more than sufficient. Besides there is no prescribed norm regarding OPD area by the MCI.

11. Explanation has also been rendered with regard to the number of patients. It is contended that on 16.6.2012 there were 373 in-patients and 903 out-patients and, thus, the report cannot be relied upon. It is further submitted that it is incorrect to state that there were no post-operative cases as the same were treated as day-care surgery patients and discharged the same. Reliance is placed in the case of **Al-Karim Educational Trust & Anr. Vs. State of Bihar & Ors.**, (1996) 8 SCC 330 in support of the plea that it is

impractical to insist for a fool proof or absolute adherence of all the requirements. The following observations of the Court have been relied upon :

“(h) It is impractical to insist, for a foolproof or absolute adhere to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a particular way, especially because the Institution has begun to function, students admitted to the Institution have taken the examination and the fate of a good many number of students should not hang in the balance in an unending or everlasting manner.

(i) In the final analysis, the question to be posed is whether there exists the minimal and satisfactory requirements to keep the matter going, and not whether better arrangements that will render the set-up more efficient and more satisfactory, should be insisted as “a wooden” rule.

(j) It may be that there are some minor deficiencies here and there which call for rectification. Time can certainly set right such matters. What is required is a total, practical, overall view in the light of the latest tabular statement filed along with the affidavit dated 4-9-1995. Material placed before the court goes to show that there has been ‘substantial’ though not literal compliance with the deficiencies pointed out in the latest report dated 28-6-1995.”

12. The present petition has been opposed by counsel for the respondent. At the outset reliance is placed by counsel for the respondent on *State of Kerala Vs. T.P. Roshna* (1979) SCC 580, to highlight the role of the Medical Council of India, wherein the Supreme Court has observed that the Medical Council of India as an expert body which is to control minimum standard of medical education and to regulate the working of an institute. Paragraph 16 of the judgment reads as under:

“16. The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance.

Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall investigation by the Medical Council to prevent sub-standard entrance qualifications for medical courses.....”

13. Reliance is also placed on *Medical Council of India Vs. State of Karnataka* (1998) 6 SCC 131 and more particularly paragraph 29, in support of the plea that a medical student requires intense study which can only be done if proper facilities are available in the medical college and the hospital attached to it, and in the absence of proper facilities, as in the case of the petitioner, the respondent was fully justified in rejecting the renewal. Paragraph 29 of the judgment reads as under:

“29. 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.....”

14. Reliance is also placed by counsel for respondent on Section 10A of the Indian Medical Council Act, 1956 to highlight the parameters which are to be considered by the respondent for granting permission to set up and to continue any medical college. Mr.Kumar, counsel for the respondent contends that duty is cast on the respondent to ensure that the college is able to provide necessary facilities in respect of staff, equipment, accommodation therein and other facilities to ensure proper functioning of the medical college. The decision of the expert body is to be based on

relevant considerations, thus it is contended that the present writ petition is devoid of any merits, as the college has failed to fulfil and cure the deficiencies as pointed out. Counsel has also placed reliance on **Medical Council of India Vs. Rajiv Gandhi University of Health Sciences** (2004) 6 SCC 76 in support of his plea that the respondent would be well within their right, not to grant renewal, since the college has failed to fulfil the minimum norms for the present year. It is contended that the permission is to be renewed every year, subject to the college achieving the yearly target mentioned in “Minimum Requirement for 150 M.B.B.S., Admission Annually Regulations, 1999”. The regulation provides for accommodation in the medical college and its teaching hospital. Counsel also submits that pursuant to the application made by the petitioner for renewal, assessment of the petitioner’s medical college was carried out on 17 -18th February, 2012 and certain deficiencies were pointed out by the assessment team in the assessment report, which was duly conveyed to the petitioner vide communication dated 26.05.2012. The assessment was carried out on the above dates after giving prior information to the petitioner. The petitioner had submitted their representation on 02.06.2012 wherein it was stated that they had complied with all the deficiencies pointed out by the MCI pursuant to the earlier inspection of 17 -18th February, 2012. On receipt of the representation of the petitioner and before any final decision could be taken, the MCI decided to conduct a surprise inspection to verify whether any deficiency still exists in the petitioner’s medical college. The inspection was carried out on 16.06.2012 by two professors, who found a completely different picture to the earlier claims of the petitioner, college and what was shown in the earlier assessment. There were gross deficiencies *inter alia* in the faculty, infrastructure, clinical material. On the basis of the finding of the surprise

inspection, another opportunity was granted to the petitioner college, to appear and explain the deficiencies before the final decision is taken in the matter vide communication dated 26.06.2012. On 27.06.2012 representative of the petitioner, college was present and a written representation was also submitted by them in respect of the gross deficiencies pointed out by the assessors. On the basis of oral submissions and the representation made, the Board of Governors on 28.06.2012 declined the renewal for the third batch of students. The deficiencies, according to the respondent were with respect to hospital accommodation, accommodation for other staff and deficiencies in the infrastructure, manpower and clinical material. It is thus contended that the rejection was justified on account of the serious deficiencies, in the infrastructure faculty clinical material and others. It is also submitted by counsel for the respondent that merely because the petitioner has been granted permission on earlier occasions, does not entitle the petitioner for automatic continuance of such permission as statutory provisions require that the standards are to be maintained throughout and if deficiencies are found at any stage, the permission cannot be renewed. It is for this purpose that the statutory scheme provides the concept of yearly renewal of permission till recognition of decree.

15. It is disputed that the requirements with regard to accommodation, so pointed out, are not necessary, as the same are elaborately mentioned in the statutory provisions itself and on earlier occasion also the petitioner college has provided the same to MCI, when it was established and when the first renewal was granted in 2011, and thus it cannot be pleaded that the assessor's form did not have a designated column for the same. While counsel for the respondent has not disputed that as per the usual practice, the assessors are appointed for compliance and verification and are

instructed to verify the compliance of the deficiencies pointed out in the earlier inspection. It is however, submitted that they are appointed in the bona fide belief that the medical colleges / institutions who are carrying out the act of providing education will not manipulate the affairs of the institution at the time of assessment, when they have prior information of assessment / inspection being carried out. It is strenuously contended that the assessor's could not turn a blind eye and ignore the glaring deficiencies which were visible at the time of verification. To ignore the deficiencies found in the compliance verification inspection would amount to dereliction of duty assigned by the MCI and would result in grant of renewal to an institution which is ill equipped in terms of faculty, clinical material and infrastructure, which would be against the aims and objects of the Act and the law laid down by the Apex Court.

16. Counsel also contends that surprise inspections are now carried out frequently as several instances have come to light that at the time of inspection the colleges stage manage the statutory requirements, temporary facilities are created and faculties are created temporary and thus to ascertain the ground realities, the MCI conducts surprise inspections without prior information to the college to ascertain the ground reality. It is further submitted that the compliance verification did not contain fresh deficiencies but also found that previously pointed out deficiencies in relation to accommodation of students, teachers, nurses and staff had not been rectified, which duly find mentioned in the counter affidavit. It is submitted that the clarifications submitted by the petitioner was not found to be satisfactory in the light of physical verification carried out by the assessors.

17. Counsel for the respondent next contends that although a copy of the compliance verification assessment report was not attached to the e-mail dated 26.06.2012, however, a hard copy of the communication dated 26.06.2012 was sent immediately to the petitioner through speed-post and copy of the assessment report was annexed therewith. The e-mail communication had point-wise and clearly spelt out the deficiencies found in the petitioner, college, and in compliance with the verification assessment, an explanation was sought from the petitioners on those deficiencies found during the surprise inspection.
18. Mr.Kumar, counsel for the respondent also submits that even otherwise the time for grant of renewal has elapsed, as the last date for grant of permission for the academic session 2012-13 was 14.06.2012, however, the same was extended upto 30.06.2012 by the Central Government for this academic session. Strong reliance is placed by counsel for the respondent on the case Priya Gupta v. State of Chattisgarh & Ors, passed in Civil Appeal No.4318/2012 reported in 2012 (5) SCALE, 328, which provides that any permission granted after 15th July of the relevant academic year shall not be considered for admission to that academic year, but only for the next academic year. Mr.Kumar, further submits that the Al-Karim's case which is relied upon by the petitioner has been considered by the Constitution Bench in the case of Dr.Preeti Srivastava Vs. State of M.P (1999) SCC 120 wherein it has been held by the Constitution Bench that regulations framed by the MCI in exercise of powers under section 33 of the Act are statutory in nature and their compliance is mandatory.
19. Counsel for the respondent contends that it is no longer *res integra* that strict adherence to the time schedule prescribed under the regulations of

the MIC is to be followed. The Supreme Court has gone to the extent of saying that any violation would be treated as a contempt of court.

20. The submission of counsel for the petitioner that the impugned order contained only two deficiencies has been refuted. It is submitted that besides the two deficiencies pertaining to clinical material and faculty, gross deficiencies were pointed out in accommodation of students, staff faculty, nurses and the infrastructure in the college.
21. Another submission which has been urged by counsel for the respondent is that the respondent is bound to strictly follow the time schedule which has been fixed by the regulations according to which the last date for issuance of letter of permission by the Central Government was fixed as 15.06.2012. It is contended that for the academic year 2012-13 with the prior permission of the Central Government the last date for grant of permission is extended to 30.06.2012. The last date for grant of permission having been passed, the answering respondent has no power to enlarge the time. Reliance is placed on a decision of the Apex Court in *Mridul Dhar Vs. UOI* (2005) 2 SCC 65, where the Supreme Court has taken note of the schedule appended to the Establishment of a Medical College Regulations, 1999. In the aforesaid decision the Supreme Court has directed all concerned to strictly adhere to the schedule mentioned in the regulation. Point 14 in the paragraph 35 of the judgment reads as under:

“14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.”

22. To the same effect is the judgment of the Supreme Court dated 08.05.2012 in the case of *Priya Gupta v. State of Chattisgarh & Ors.*, passed in Civil Appeal No.4318/2012 reported in 2012 (5) SCALE, 328 wherein the Supreme Court has held in paragraphs 23, 24, 25 and 27 of the judgment, which are reproduced below:

“23. Lastly, in the case of Priyadarshini Dental College & Hospital v. Union of India & Ors. [(2011) 4 SCC 623], this Court cautioned all concerned that the schedule specified in Mridul Dhar (supra) should be maintained and regulations should be strictly followed. The Court suggested that the process of inspection of colleges, grant of permission or renewal of permission should also be done well in advance to allow time for setting right the deficiencies pointed out.

24. In the case of State of Bihar & Ors. v. Dr. Sanjay Kumar Sinha & Ors. [(1990) 4 SCC 624], a Bench of this Court took exception to the non-adherence to the time schedules and reiterated that the admissions to medical colleges and post-graduate courses were governed by the orders of this Court and the regulations issued by the Medical Council of India, which must be strictly followed. This Court issued a warning, that if there was any violation in future, the same shall be treated as default and viewed very seriously. Further, in the case of [Medical Council of India v. Madhu Singh & Ors.](#) [(2002) 7 SCC 258], this Court declared two very important principles. Firstly, it declared that mid-stream admissions should not be permitted and secondly, noticing the practice of compassion in review of such admissions, this Court also held that late or mid-stream admission, even just four months after beginning of the classes, cannot be permitted.

25. A consistent and clear view held by this Court is that the regulations framed by the MCI are binding and these standards cannot be deviated from. Reference can be made to State of M.P. & Ors. v. Gopal D. Tirthani & Ors. [(2003) 7 SCC 83 – paras 24 and 26]; Bharati Vidyapeeth (Deemed University) & Ors. v. State of Maharashtra & Anr. [(2004) 11 SCC 755 –

para 20]; Chowdhury Navin Hemabhai & Ors. v. State of Gujarat & Ors. [(2011) 3 SCC 617 – paras 7, 11, 12, 14 and 18] and Harish Verma & Ors. v. Ajay Srivastava & Ors. [(2003) 8 SCC 69 – paras 14 to 21].

27. Now, let us examine the adverse consequences of non-adherence to the prescribed schedules. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations. Inter alia, the disadvantages are:-

- 1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of Muskan Dogra & Ors. v. State of Punjab & Ors. [(2005) 9 SCC 186].
- 2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.
- 3) The delay in adherence to the schedule, delay in the commencement of courses etc., encourage lowering of the

standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit.”

23. The Apex Court has strongly deprecated the non-adherence to the time schedule prescribed in the MCI regulations. The Court had expressed deep concern regarding blatant violation of the rules and regulations and issued certain directions in that regard, including consequences of default of those directions. Paragraph 30 reads as under:

“30. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied strict sensu and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above- stated principles. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned.

(i) The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15 th July of each calendar year for the relevant academic sessions of that year.

(ii)

(iii) After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counseling, in accordance with the Rules.”

24. Mr.Kumar, submits that the petitioner was issued a show cause notice dated 26.06.2012 wherein all the deficiencies found pursuant to the inspection carried out on 16.06.2012 were clearly pointed out and in reply thereto dated 27.06.2012 all the issues regarding hostel, staff quarters, nurses accommodation, kitchen, accommodation for married nurses, deficiencies in the OPD area, deficiencies in the radiology department,

records of ultra- sound reports, deficiencies in the ultra-sound machine and deficiencies in ICCU, RICU, lack of faculty have been addressed by the petitioner and thus it cannot be said that the petitioner was at any disadvantage on account of non-receipt of the assessment report formally.

25. Counsel submits that no reliance can be placed on the documents submitted along with the application (CM.No.10062/2012) seeking leave to raise the additional grounds as the same are unreliable. It is submitted that in most cases salary is shown to have been paid to doctors in cash and there is no proof of payment except cash vouchers issued by the petitioner. The strength and genuineness of the faculty was physically verified and it was found that not even 20% of the faculty which the college claims to have, was present on the date of inspection. As per the report in IPD most of the patients were either apparently not having any ailment or minor ailment which did not require admission. The data recorded in the log books on which the petitioner is placing reliance were not found in order on physical verification.
26. Counsel further disputes the claim of the petitioner, college of having adequate clinical material, in terms of OPD and IPD, as they do not match with the surprise inspection which was conducted by the assessors, to verify information submitted by the college, fake patients were produced as shown to be admitted in different departments. It is submitted that the college claims that all post operative cases on the day of inspection was treated as day care surgery and were discharged and sent home, which would show that no major surgeries were being carried out by the petitioner.
27. It is next submitted by Mr.Kumar, that the assessors appointed by the MCI are not employees of the MCI, but independent experts and head of

department(s) and professor(s) of reputed government medical colleges. One of the assessors, who inspected the institution on 16.06.2012, is the Head of Department of Lady Harding Medical College, Delhi which is a fully owned and managed by the Government of India and the MCI has no control over the same. Thus it is submitted that the assessors were in no way biased in the inspection carried out by them.

28. I have heard counsel for the parties and carefully considered their rival contentions. The petitioner college was established in the year 2010 and the first renewal of admission for the second batch was granted on 28.06.2012. It is the renewal for the third batch of 150 students for the academic year 2012-13, which is the bone of contention between the parties.
29. The petitioner applied for renewal for the admission for academic year 2012-13 on 22.12.2011. By a letter of 13.02.2012, the respondent appointed inspectors for assessment of the physical and other teaching facilities for renewal. The petitioner was informed about the date of inspection and after inspection an assessment report dated 17–18/02/2012 was prepared. It is the case of the petitioner that after a gap of three months the respondent issued a deficiencies report on 26.05.2012. The petitioner was informed about the deficiencies and five deficiencies were pointed out and other deficiencies mentioned in the report were also relied upon. On 02.06.2012 a compliance report was filed by the petitioner. The petitioner requested that the renewal be granted for the third batch of students. Strong reliance has been placed by counsel for the petitioner on the communication issued to Dr.H.S. Rehan and Dr.Prem Prakash Gupta, who were appointed to carry out the assessment and to verify the compliance submitted by the petitioner. The letter reads as under:

“Sub: Assessment of the physical and the other teaching facilities available for renewal of permission for MBBS course for 3rd Batch Tagore Medical College and Hospital, Chennai under Dr.MGR Medical University T.N. U/s.10A of the IMC Act, 1956-Compliance verification assessment thereof.

Sir/ Madam,

I am directed to inform you have been appointed as an Assessors to carry out the assessment to verify the compliance submitted by the authorities of Tagore Medical College and Hospital, Chennai on the deficiencies pointed out in the MCI inspection report.

You are requested to verify only the issues related to the deficiencies raised in the earlier assessment 17th & 18th February, 2012 on 16th June, 2012.

You are also requested to send the hardcopy of the assessment report by the Speed Post/ Courier/ By Hand to the Deputy Secretary, U.G. Section, Medical Council of India, Pocket-14, Sector-8, Dwarka, Phase-I, New Delhi-110 077.

A copy of the compliance submitted by the College alongwith the assessment reports are enclosed for your perusal for carrying out the above assessment.

You are further requested to collect the demand draft of Rs.3.00 lakhs from the college authorities in favour of Secretary, Medical Council of India, payable at New Delhi as Compliance Verification assessment fee.

Note: - Please noted that this is a surprise assessment. Hence, please do not interact with college authorities in this regard.”

30. It is the case of the petitioner that the assessors had to follow a specific mandate i.e. to verify compliance submitted by the petitioner on the deficiencies pointed out in the MCI inspection report. Reading of the

letter would show that these two professors were requested to verify only issues related to the deficiencies raised in the earlier assessment of 17-18/02/2012. The assessors carried out a surprise inspection on 16.06.2012, wherein deficiencies were pointed out. The deficiencies pointed out to the petitioner are under various heads. Petitioner was informed that the deficiencies were observed pertaining to size of rooms in the boys and girls hostel being grossly inadequate, no separate hostel for residents (SR/JR), two apartments being short for teaching staff, quarters accommodation for nurses being short by 16, mess/ kitchen facility not available, no provision for accommodation for married nurses, inadequate OPD area, deficiencies of two technicians in the radiology department, against the total strength of 8, as per MCI norms. Deficiency of one ultra-sound machine or a colour Doppler machine, records of ultrasound, gross deficiencies of faculty in the general medicine department, and many patients with no ailments or for minor ailments were shown admitted. The case records of many patients were incomplete. Similar was the situation in the general surgery department, and many patients with fake complaints were shown admitted and case records of many patients were incomplete. In the ICU, RICU, CICU, GICU & SICU the patients admitted were relatively stable as none of the patients were either on oxygen therapy and ventilator support or even on IV line; aseptic precautions were not followed. The data submitted previously by the college authority was not consistent with the rule book. The above areas were not fully equipped in terms of availability of ventilators/ non-invasive ventilators/ multi- para-Monitors which are basic essential for any patient admitted; and the other deficiencies as per the assessment report were also relied upon. The petitioner by a communication dated 27.06.2012 responded to all the deficiencies which

were brought to their notice and explanations were rendered on their behalf. The submissions made by counsel for the petitioner are to be considered in the light of the inspection carried out on 17-18/02/2012 and 16.06.2012.

31. The short question which comes up for consideration before the Court at the very first instance and as urged by Mr.Chadha, is as to whether the assessors' report based on a surprise inspection which was carried out on 16.06.2012 is to be ignored on the ground that they were only directed to verify the issue related to the deficiencies raised in the earlier assessment of 17th and 18th February, 2012. Whether their inspection report is to be rejected for the reason that as per the assessors' guide, three professors are to be appointed to assess the college, and whether the report is to be rejected since the compliance verification assessment report is only to verify the compliance of deficiencies and it cannot become a fresh assessment report. In my view, the answer has to be in the negative. It is an admitted position that the first inspection was carried out after informing petitioner on 17-18/02/2012. Although the respondents took three months' time to inform the petitioner about the deficiencies, the petitioner was duly informed about the deficiencies in hostel accommodation, shortage of bed in psychiatry department, shortage of two labs in Physiology, no mess and accommodation facility in RHTC, and accommodation regarding staff, nurses, students and residents were contradictory in Form A and assessor report. The petitioner by a communication of 02.06.2012 had rendered their explanation.
32. Having regard to various provisions of the Indian Medical Council Act, 1956, the medical Council has been given the responsibility of discharging the duty of maintenance of standards of medical education in

the country. In the case of State of Kerala (Supra) this fact was recognized by the Apex Court and it was held that the high powered council has the power to prescribe the minimum standards of medical education. The council has to supervise the qualifications, the eligibility standards for admission into Medical Institution and they must ensure that proper facilities are available in a medical college and the hospital attached to it is fully equipped with for the reason that a medical student requires grueling study. It is the responsibility of the MCI to ensure that at the end of the course a student is not found wanting in a way on account of lack of teaching facilities or lack of exposure of patients during the course of study. Thus to fall back on mere technicalities compared to the glaring deficiencies which have been pointed out by two eminent professors cannot be permitted, as it would defeat the aims and objects of the Act. The opening lines of the observations of the assessors, which are reproduced below, would give some indication of the state of affairs and reasons for the inspection report dated 17th and 18th February, 2012, cannot be relied upon:

“Special Note

The college authorities were aware of the impending assessment for the compliance of the deficiencies pointed out as we were received at the college premises on arrival. It is an issue of serious concern, since it was a surprise inspection.”

[Emphasis supplied]

33. In this detailed inspection report dated 16.06.2012, it has been pointed out that in the boys hostel each room measures around 4 sq. mtrs, which accommodates three students, while the space required for a student as per the MCI norms is 10 sq. mtrs, which would show that the size of the room

in the boys hostel is grossly inadequate, as per MCI norms. It was noticed that few rooms in the boys and girls hostels have been allotted to four students which is again a violation, and many rooms in girls hostels were fabricated with temporary structures like aluminum and particle boards. Shortage was found of one bed in psychiatry department, shortage of two labs in physiology department. There were no mess and accommodation facilities in RHTC, although some folding beds were put in three rooms. There were more serious deficiencies in the radiology department. On physical verification only three radiology technicians were seen, and the evidence of leave of the person was not made available, despite request. There was lack of equipments in the radiology department. Since it appears that the petitioner had advanced notice of the so called surprise inspection, in the medical department many patients with no ailments or minor ailments were shown admitted. It has been noticed that even attendants (including two small kids) were occupying the bed giving a false impression of higher bed occupancy. Case records of many patients were incomplete, history of investigation treatment was lacking. Only one doctor was available in the medical ward. Senior Faculty and HOD were absent on ward visit. The assessors have also observed that they had asked the Dean for head count of the faculty of General Medicine, and after waiting for two hours, she was able to produce part of the faculty, according to which only one associate professor out of 5, 2 assistant professors out of 6, 3 senior residents out of 9, and 10 junior residents out of 18 were found at the hospital. The assessors also found it difficult to satisfy themselves as to whether the junior residents actually belong to medicine department or not, as their identity cards produced, did not mention as to which department they were attached to.

34. The Assessors further highlighted the fact that the college authorities failed to produce any reason or evidence to justify the non-availability of faculty. Copy of the attendance sheet was enclosed with the report. Similar observations were made by the Assessors with regard to the deficiencies of the faculty in the Medicine Department. They found that many subjects were admitted with the fake complaints; the records of many patients were incomplete; only one junior Surgery Doctor was available on visit of all Surgical Wards. The Assessor also discovered that not a single pre-operative or post-operative surgery case was present in the ward. The post-operative surgery ward comprised of three patients. One post Trmpanoplasty, one post Tonsillectomy and the other one with incision drainage of small abscess in the right hand. As per the report, after a wait of more than three hours and several requests to the Dean only one Professor, two associate Professors, one Assistant Professor, one Senior Resident and four Junior Residents could be found available. Patients admitted to ICCU, RICCU, CICU, GICU and SICU were relatively stable as none of the patients were was on oxygen therapy or ventilator support or even on IV line. The report of the Assessor reveal a very sorry state of affairs. By filing additional grounds the petitioner has annexed various documents in support of its plea that all facilities are in place. When it was pointed out that the salaries have been paid in cash to the Doctors various receipts were pointed out to show that large number of salaries were even being paid through cheque. The documents placed on record would also show that a large number of Doctors even Senior Doctors have been paid salaries in cash, which is not a normal practice and upon reading the report which shows that doctors were not available despite waiting for more than two hours, the court can only drawn an adverse inference that the cash receipts are only self-serving and

unreliable. There is no reasonable explanation for the same and only an adverse inference can be drawn that the cash receipts are either manipulated or manufactured, or the Doctors are being paid in cash so that they are available at the time of inspection, as guest artists. Even after the petitioner had got some prior information of the surprise inspection, petitioner was able to produce 20% faculty, fake patients and attendants of the patients including children were asked to fill the beds to satisfy the Assessors who had visited the college, it would be difficult to imagine what would be the state of affairs in case they had no prior information.

35. I am also satisfied that petitioner had complete knowledge about the assessors' report dated 26.06.2012, which is evident upon reading of reply dated 27.06.2012 as all deficiencies pointed out were addressed by them, thus it cannot be said that there was any violation of principles of natural justice. The request made by counsel for petitioner for another inspection is declined, for the reasons that an institution, who attempts to stage manage things in the manner as detailed above i.e. arranging fake patients, cash payment receipts for doctors and only 20% faculty, cannot be given benefit of another inspection, as such a practice is to be discouraged.
36. Reliance is placed by counsel for the petitioner in the case of *Al-karim (Supra)*, is misplaced, as the Apex Court has held that if there is substantial compliance of deficiencies, minor ones can be overlooked, whereas in the case at hand, two basic requirements for training MBBS students, i.e. the faculty and the patients are severally lacking. Reliance placed by counsel for the petitioner in the case of *Priyadarshini Dental College (Supra)*, is also misplaced. The paragraph 22 to 25 of the judgment relied upon by the petitioner clearly provides that renewal cannot be rejected for insignificant or technical violations and object of

the same is to ensure that infrastructural and faculty requirements are fulfilled in a gradual manner. In the instant case MCI is seeking nothing else but this gradual fulfillment of statutory requirements before permission can be renewed, whereas in the case at hand instead of improving it has shown deterioration.

37. Even otherwise, no benefit can be granted to the petitioner, as the time schedule for grant of permission is mandatory and binding and the importance of adhering to the time schedule has been highlighted by the Apex Court in the cases of Mridul Dhar (Supra) [See page 65 para 35]; Priya Gupta (Supra) [See page 328 paras 30-31]; and Medical Council of India Vs. JSS Medical College (2012) 5 SCC 628 [See para 8].
38. The petitioner in this case had approached this court on 03.07.2012 by filing a petition [WP(C)No.3845/2012]. Being conscious of the mandate of the Apex Court in Priya Gupta's case the petitioner withdrew the writ petition No.3845/2012 on 10.07.2012 and approached the Supreme Court of India. The Supreme Court did not grant any relief to the petitioner and granted leave to approach this court again by an order dated 23.07.2012. Petitioner is thus responsible for the delay in approaching the Court.
39. I find no infirmity or perversity in the impugned order. The impugned order is neither casual nor any principle of natural justice has been violated. The writ petition is devoid of merit and is thus dismissed. No order as to costs.

CM.9303/2012 & CM.9304/2012

40. In view of order passed in the writ petition, applications stand dismissed.

G.S.SISTANI, J

SEPTEMBER 11, 2012

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